

Lewis Edward O'leary, Jr. 10/6/2009

Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

3       SUNQUEST PROPERTIES, INC.  
4       AND CARRIAGE HOUSE  
5       APARTMENTS PARTNERSHIP

PLAINTIFFS

6       V.                   CIVIL ACTION NO. 1:08-CV-687-LTS-RHW

7  
8       NATIONWIDE PROPERTY AND  
9       CASUALTY INSURANCE  
10      COMPANY AND JOHN DOES 1-5

DEFENDANTS

11  
12      VIDEO DEPOSITION OF LEWIS EDWARD O'LEARY, JR.

13  
14      Taken at the instance of the Defendants at  
15      Sullivan, Stoler and Resor, APLC, 909 Poydras  
16      Street, Suite 2600, New Orleans, Louisiana, on  
17      Tuesday, October 6, 2009, beginning at 9:04 a.m.

18      APPEARANCES:

19                   NATHAN M. GAUDET, ESQ.  
20                   MATTHEW K. BROWN, ESQ.  
21                   Sullivan, Stoler and Resor, APLC  
22                   909 Poydras Street, Suite 2600  
23                   New Orleans, LA 70112

24                   COUNSEL FOR PLAINTIFFS  
25

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 2</p> <p>1 ROBERT B. GILMORE, ESQ. JEFFREY TODD, ESQ. 2 Kirkland &amp; Ellis, LLP 655 15th Street, N.W., Suite 1200 3 Washington, DC 20005 4 COUNSEL FOR DEFENDANTS 5 6 7 8 VIDEOGRAPHER: Lynda Marshall 9 10 REPORTED BY: Kelly Powell, CSR Brooks Court Reporting, Inc. 11 Post Office Box 2632 Jackson, Mississippi 39207 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 VIDEOGRAPHER: This is the video 2 deposition of Lewis Edward O'Leary, Jr. taken by the 3 counsel for the defendant in the matter of Sunquest 4 Properties, et al. in the Nationwide -- versus 5 Nationwide Insurance Company, et al., in the United 6 States District Court, Case Number 7 1:08-CV-687-LTS-RHW, held in the office of Sullivan 8 and Stoler on Tuesday, October the 9th [sic], 2009. 9 It is now 9:04 a.m. Counsel may introduce 10 themselves. 11 MR. BROWN: My name is Matthew Brown, and 12 I'm counsel for Sunquest, and with me is Nathan 13 Gaudet, co-counsel. 14 MR. GILMORE: Robert Gilmore, Kirkland &amp; 15 Ellis, LLP, on behalf of Nationwide Mutual Fire 16 Insurance Company. With me is my colleague Jeffrey 17 Todd, also with Kirkland &amp; Ellis. 18 VIDEOGRAPHER: The court reporter will now 19 swear in the witness. 20 LEWIS EDWARD O'LEARY, JR., 21 having been first duly sworn, was examined and 22 testified as follows: 23 EXAMINATION BY MR. GILMORE: 24 Q. Morning, Mr. O'Leary. 25 A. Good morning.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 Style and Appearances.....1 3 Index .....3 4 Certificate of Deponent .....250 5 Certificate of Court Reporter .....251 6 Examination By Mr. Gilmore .....4 7 Examination By Mr. Brown .....243 8 267 Notice of Video Deposition .....6 9 268 Subpoena Duces Tecum .....21 10 177 Resume .....25 11 176 Mississippi State University .....27 12 Degree 13 183 Expert Witness List .....57 14 289 Probuders Insurance Claim .....64 15 Consulting Brochure 16 290 Probuders Insurance Claim .....64 17 Consulting Brochure 18 174 Probuders Report of Findings .....86 19 187 Estimate for Building Number 4 ....205 20 237 Photographs .....216 21 184 Estimate for Building Number 1 ....228 22 236 Photographs .....229 23 258 Westlaw, Court of Appeals of .....236 24 North Carolina, State of North 25 Carolina v. Lewis O'Leary</p>	<p style="text-align: right;">Page 5</p> <p>1 Q. Could you state your full name for the 2 record, please? 3 A. Lewis Edward O'Leary, Jr. 4 Q. What was your date of birth, Mr. O'Leary? 5 A. November the 4th, 1947. 6 Q. You've given a deposition before, correct? 7 A. Yes. 8 Q. Well, I'm going to just go over the ground 9 rules. You're probably familiar with them already. 10 I'm here to ask questions that you understand. If I 11 ask a question that you're not sure you understand, 12 I just ask you to let me know, and I will try and 13 rephrase it. Is that fair? 14 A. Yes. 15 Q. If you answer one of my questions, I'm 16 going to assume that you understood my question. Is 17 that okay? 18 A. Yes. 19 Q. Is there any reason why you can't give 20 full and accurate and truthful answers today in 21 response to my questions? 22 A. No. 23 Q. Are you taking any kind of medication or 24 prescription drugs of any type that may impair your 25 ability to testify or remember events in any way?</p>

2 (Pages 2 to 5)

Lewis Edward O'leary, Jr. 10/6/2009

Page 6

1 A. I took nine different pills this morning  
 2 but I think that's more to do with age than  
 3 anything.  
 4 Q. I'm not going to -- I'm not going to ask  
 5 you to list your medicines as long as you're  
 6 comfortable that you're able to testify completely  
 7 and accurately today.  
 8 A. Yes, sir, I feel like I am.  
 9 Q. Okay. I'm going to hand you what has been  
 10 premarked as Defense Exhibit 267.  
 11 (Exhibit 267 marked for identification.)  
 12 Q. (By Mr. Gilmore) And that's the notice of  
 13 your deposition in this case. When did you learn  
 14 that you were going to be giving your deposition  
 15 today?  
 16 A. I can't tell you the exact date. I have  
 17 staff that receive stuff like this, and they will  
 18 either call me on the phone if I'm on the road or  
 19 they will tell me when I'm sitting in the office.  
 20 I've known for a while.  
 21 Q. Can you tell me what you did to prepare  
 22 for today's deposition?  
 23 A. Reviewed the materials that I had already  
 24 submitted, attempted to get into some of the  
 25 materials that y'all have provided, which I just got

Page 7

1 yesterday, so I really haven't covered a lot of  
 2 ground with it yet, talked to some of the people  
 3 that helped me put these reports together to make  
 4 sure that I was on firm footing in terms of what I  
 5 was asserting and why.  
 6 Q. Can you tell me who you talked with to  
 7 prepare for today's deposition?  
 8 A. Tammy Crossley, which was a public  
 9 adjuster that first introduced me to this property  
 10 before I even met Ralph Brockman, Jerry Wiggins, who  
 11 is a mechanic that bills the Xactimate estimates for  
 12 me, Todd Skinner, a gentleman that teaches Xactimate  
 13 in the Pensacola area at one of the local junior  
 14 colleges, Donna Bass, Ralph Brockman. I may be  
 15 missing somebody, but for the moment, that's --  
 16 that's all I can think of.  
 17 Q. Did you talk with the attorneys for  
 18 Sunquest today, either Mr. Brown or Mr. Gaudet?  
 19 A. Yes, sir.  
 20 Q. Okay. What did you talk about with  
 21 them --  
 22 A. I wanted to --  
 23 Q. -- to prepare for today?  
 24 A. -- know what information had they received  
 25 from y'all and could I have copies of it to study,

Page 8

1 and they provided me with the stuff.  
 2 Q. In this -- you've given depositions before  
 3 so you're probably familiar with this happening,  
 4 just so the court reporter can record a clean  
 5 transcript, I will just ask for you to wait until I  
 6 finish my question and, likewise, I will try and  
 7 wait to make sure that you're done with your answer  
 8 before I ask my next question. Is that fair?  
 9 A. I'll do better.  
 10 Q. That way we won't talk over each other --  
 11 A. My --  
 12 Q. -- and she won't get angry at us.  
 13 A. -- my apologies.  
 14 Q. No, no need to apologize. And, again, if  
 15 at any point you need to take a break, just let me  
 16 know.  
 17 A. Thank you, sir.  
 18 Q. We'll -- I'll just ask you to answer my --  
 19 the question I just posed if there's a pending  
 20 question, otherwise, we'll take a quick break.  
 21 A. Thank you, sir.  
 22 Q. You just mentioned a moment ago that you  
 23 were given some materials to review that you just  
 24 got yesterday. Can you tell me what materials those  
 25 were?

Page 9

1 A. There was an engineering report. I may be  
 2 mispronouncing the man's last name, Skees, an  
 3 engineer out of, I think, Kentucky. On the Rock  
 4 Engineering, I think was his company name. I was  
 5 given a number of photographs that were provided by  
 6 Nationwide that were supposedly taken by the  
 7 adjusters. I have no reason to believe that they  
 8 weren't so there was no implication of that kind.  
 9 Q. Any other materials besides the Skees  
 10 report and photos from the Nationwide adjusters?  
 11 A. They gave -- I believe that's all they  
 12 gave me.  
 13 Q. Prior to today, had you looked at any  
 14 other expert reports from either Sunquest or  
 15 Nationwide in this case?  
 16 A. There were experts that worked with me in  
 17 the preparation of my report. Steve Harned, a  
 18 meteorologist based in Raleigh, prepared a  
 19 meteorology report for this case. Terry Moran, a  
 20 licensed structural engineer on the Gulf Coast,  
 21 Dr. Neil Hall, an engineer based in Slidell. I  
 22 don't believe prior to yesterday I was ever given  
 23 any engineering reports that were produced for  
 24 Nationwide. I'm told that there are some national  
 25 forensic reports out there on this property, but I

3 (Pages 6 to 9)

Lewis Edward O'leary, Jr. 10/6/2009

Page 10

1 haven't seen them yet.  
 2 Q. Would it be important for you to ensure  
 3 that your work is complete and accurate to review  
 4 those engineering reports?  
 5 A. Absolutely. Any forensic engineer worth  
 6 his weight in salt wants to get his hands on any and  
 7 everything that would be relative to the case to  
 8 have a total picture.  
 9 Q. Have you asked for the reports?  
 10 A. I didn't even know they existed before  
 11 yesterday.  
 12 Q. Did you learn about them from reading  
 13 Mr. Skees' report?  
 14 A. That's correct.  
 15 Q. Do you anticipate asking for and hopefully  
 16 having an opportunity to review those reports prior  
 17 to your testimony at trial?  
 18 A. I absolutely want to see any and  
 19 everything that both sides have to offer.  
 20 Otherwise, I could end up with an imbalanced picture  
 21 of the loss.  
 22 Q. Now, a moment ago, you mentioned three  
 23 individuals. Two of them were Terry Moran and Neil  
 24 Hall?  
 25 A. Dr. Neil Hall, yes, sir.

Page 11

1 Q. And do you know if either -- is it  
 2 Mr. Moran?  
 3 A. Yes.  
 4 Q. -- or Dr. Hall have produced reports for  
 5 this property?  
 6 A. No, sir, they didn't. They provided  
 7 support for my report.  
 8 Q. So you consulted with those two  
 9 individuals in connection with preparing your  
 10 report?  
 11 A. Yes, sir.  
 12 Q. And I should have mentioned this at the  
 13 outset. We have two cases involving Sunquest. I'm  
 14 sure you understand this, but this deposition today  
 15 is for the Carriage House property, so all of the  
 16 questions I'm going to be asking today are going to  
 17 relate to that case. They might, of course, apply  
 18 to the work you've done for the other Sunquest  
 19 property in the other case, that's the Compass  
 20 Point, but we anticipate perhaps at a later date  
 21 taking your deposition in connection with your  
 22 report for that case, but today I'm going to be  
 23 asking you about the Carriage House just so there's  
 24 no misunderstanding. Is that fair?  
 25 A. Thank you, sir. That was my

Page 12

1 understanding.  
 2 Q. And you talked about individuals you spoke  
 3 with and materials you read. Is there anything else  
 4 that you did to prepare for today's deposition other  
 5 than what we talked about?  
 6 A. I don't think there's anything -- well, in  
 7 reviewing Mr. Skees -- for the sake of the record,  
 8 how do you pronounce the man's name?  
 9 Q. It's Skees.  
 10 A. Okay. My apologies.  
 11 Q. I take it you were not familiar with  
 12 Mr. Skees before having read --  
 13 A. That is --  
 14 Q. -- his report?  
 15 A. That is correct. There were things that  
 16 he alleged in the report that in an attempt to be as  
 17 prepared as I could be, I did a little bit of  
 18 research with what limited amount of time I had to  
 19 work with before this morning.  
 20 Q. Can you tell me what those things are from  
 21 Mr. Skees' report that you investigated prior to  
 22 today?  
 23 A. Well, he alleged that he heard of no  
 24 widespread copper thefts and related vandalism on  
 25 the Gulf Coast prior to reading it in my report, and

Page 13

1 I have started building a file on that to show just  
 2 how widespread it was on the Mississippi Gulf Coast  
 3 after Katrina in the specific area that we're  
 4 talking about.  
 5 Q. And with the understanding that perhaps  
 6 you're still investigating that issue as we sit here  
 7 today, can you tell the jury how many instances of  
 8 vandalism you are personally familiar with with  
 9 respect to properties that were damaged during  
 10 Hurricane Katrina along the Mississippi Gulf Coast?  
 11 A. I would have to go back through my files,  
 12 I worked a lot of files and what parts was vandalism  
 13 versus straight wind or flood damage, I -- I can't  
 14 articulate a number to you at this moment. It -- it  
 15 was multiple cases where vandalism occurred as the  
 16 result of power outages and inability to get to a  
 17 property because of trees down on the roads and  
 18 such.  
 19 Q. Would -- do you have personal familiarity  
 20 with more than 10 instances of such vandalism  
 21 allegedly occurring to properties?  
 22 A. Yes, sir. I grew up down here. I know a  
 23 lot of these people.  
 24 Q. Okay. Your familiarity with respect to  
 25 vandalism, does that come from properties that

4 (Pages 10 to 13)

Lewis Edward O'leary, Jr. 10/6/2009

Page 14

1 you've done work for in connection with as an  
2 appraiser or causation consulting?

3 A. Can you rephrase the question? I'm --

4 Q. Sure. Well, you've said that you're aware  
5 of multiple instances of vandalism. I'm just trying  
6 to find out is your awareness from having done  
7 professional work on those properties or is it  
8 because you know of acquaintances who say that they  
9 had their property vandalized during the storm or  
10 after the storm?

11 A. There's one less than a mile from here  
12 where there was major vandalism, a commercial  
13 property on St. Charles that I was the appraiser on  
14 and --

15 Q. That would be -- I'm sorry.

16 A. -- hundreds of thousands of dollars worth  
17 of vandalism damage before the owner could return to  
18 the city.

19 Q. That would be in -- here in Louisiana?

20 A. Yes.

21 Q. How about in the Mississippi Gulf Coast,  
22 did you work on properties where you saw that there  
23 had been vandalism?

24 A. When you say "worked on," I'm not down  
25 here working as a contractor although I am a

Page 15

1 licensed contractor. I have done no construction  
2 work on any of these projects, so my work would be  
3 as a consultant. I don't know if that qualifies as  
4 worked on or not.

5 Q. I -- I will use worked on the way you use  
6 worked on, in any kind of professional capacity.

7 A. Okay. In investigating a claim, if you  
8 don't investigate the surrounding environment to a  
9 claim, whether it be wind or vandalism, I don't feel  
10 like you're doing your job. So if there's a claim  
11 that vandalism occurred on a property, I will  
12 commonly investigate the area to see if there was  
13 vandalism in the area. I have access through  
14 friends -- remember I mentioned to you I grew up  
15 down here -- where I can get information from the  
16 Sheriff's Department, which I'm gathering right now  
17 since Mr. Skees has brought this up, just how  
18 widespread it was in that area.

19 Q. And that's what led to my question. As  
20 you sit here today, can you give an estimate of the  
21 number of properties on the Mississippi Gulf Coast  
22 that you have done work in connection with where  
23 there was vandalism alleged to have occurred?

24 A. If I find a customer alleging vandalism,  
25 and I'm not trying to be cute or get around your

Page 16

1 question, I'm trying to quantify the question, and  
2 he says that this house was vandalized, and I find  
3 that there are several others in that area that were  
4 vandalized via whatever source, whether it be the  
5 Sheriff's Department, hearsay or what have you, how  
6 do -- how do you want me to quantify a number here?  
7 It's -- it's multiple cases I've been involved in  
8 where there was vandalism involved, and I found  
9 other vandalism in the neighborhood. How do you  
10 want me to quantify the number, I guess? I'm -- I'm  
11 -- once again, I'm not trying to be evasive here,  
12 please.

13 Q. If you're able to give an estimate of how  
14 many properties, is it, you know, 10 properties that  
15 you worked on where there was -- you believe there  
16 was vandalism that occurred? Was it two properties?  
17 Was it 20? Just a number, your best estimate,  
18 that's all I'm asking for, sir.

19 A. Eight to 10.

20 Q. Overall, how many properties along the  
21 Mississippi Gulf Coast in total have you done work  
22 for in connection with Hurricane Katrina in any  
23 professional capacity?

24 A. I can't give you a number at this moment  
25 because I operate on different levels depending on

Page 17

1 the customer's need. If a customer needs me to do a  
2 forensic examination of the property and render an  
3 opinion on it, that's one service. If I am to serve  
4 as an appraiser on a claim that I may have already  
5 done a forensic report on, that's a different  
6 service. Estimating, I do estimating also for  
7 customers, so because I do different services,  
8 collectively, I'm going to guess and say about 75  
9 cases I've been involved in to -- either on a  
10 cursory level or heavily involved or somewhere in  
11 between.

12 Q. So let's break that down. Of the 75  
13 cases, how many of those have you prepared a  
14 forensic report regarding the cause and origin of  
15 damage to the property?

16 A. I -- I can't give you a number off the top  
17 of my head.

18 Q. Can you give me a best estimate, a range  
19 of that's all you can think of right now?

20 A. A formal report is what you're asking as  
21 opposed to a letter expressing an opinion. I'm  
22 trying to find where you break the line here.

23 Q. Either -- any kind of opinion reduced to  
24 writing that you've given to a property owner  
25 regarding cause and origin.

5 (Pages 14 to 17)

Lewis Edward O'leary, Jr. 10/6/2009

Page 18

1 A. I'm going to say I have produced something  
2 in writing on 20 to 25 cases. It may be more. I'm  
3 just not really ready to give you an exact number.  
4 Q. How many cases have you served as an  
5 appraiser for properties on the Gulf Coast in  
6 connection with Hurricane Katrina damage?  
7 A. I'm not sure. You know, if I were to give  
8 you a wild guess, I would say 12 to 15.  
9 Q. Fewer cases than cases in which you've  
10 offered a cause of origin opinion?  
11 A. Yes, sir.  
12 Q. Another category you worked, I think you  
13 said, was providing estimates of repair?  
14 A. Yes, sir.  
15 Q. How many properties have you provided  
16 estimates of repair for in connection with Hurricane  
17 Katrina damage on the Gulf Coast?  
18 A. An estimate of repair may amount to a  
19 single number or a detailed estimate or somewhere in  
20 between.  
21 Q. Any of the above.  
22 A. 30.  
23 Q. Now, I imagine for some properties you've  
24 done -- you've fulfilled multiple roles?  
25 A. Yes, sir.

Page 19

1 Q. As you're doing here for the Sunquest  
2 property; is that right?  
3 A. Yes, sir.  
4 Q. And I'm adding up these numbers and --  
5 well, let me just ask this question: Are there  
6 any -- any kinds of professional services that  
7 you've rendered to properties other than the  
8 categories we've talked about, cause and origin  
9 opinions, appraisals and repair estimates?  
10 A. Those are the three main categories, sir.  
11 Q. So there's no other types of services that  
12 you've provided to properties on the Gulf Coast  
13 concerning Hurricane Katrina damage?  
14 A. They all stem from those three services.  
15 I am trained also as an adjuster, so from time to  
16 time, I'm asked an opinion on whether or not this  
17 would be this type of coverage or this type of  
18 coverage referring to a particular form of damage.  
19 Q. Have you performed public adjusting  
20 services for property owners?  
21 A. I'm not a public adjuster, no, sir. I  
22 have not been public -- I do work under public  
23 adjusters at times who want an estimate from me or  
24 want a report from me on my opinions on this. I say  
25 I work under them. They're the representative of

Page 20

1 the customer. They recommend to the customer to  
2 hire someone like me, and they provide me with the  
3 input I need in terms of what information is  
4 available for me to work with.  
5 Q. Have you worked as an umpire in connection  
6 with appraisals of any properties on the Mississippi  
7 Gulf Coast --  
8 A. Yes.  
9 Q. -- concerning -- concerning Katrina  
10 damage?  
11 A. Yes, sir.  
12 Q. How many times have you served as an  
13 umpire?  
14 A. Twice.  
15 Q. For the approximately 75 properties that  
16 you've performed professional services for in  
17 connection with Hurricane Katrina on the Gulf Coast,  
18 have those services been provided to the property  
19 owner in each case?  
20 A. Attorneys at times will hire me and pay  
21 me. Why they're hiring me and paying me, I can't  
22 always tell --  
23 Q. Well --  
24 A. -- as opposed to the customer.  
25 Q. Sure. Well, let's -- we'll break it down.

Page 21

1 Starting with just the customers who've hired you  
2 directly, all of the customers who you've been  
3 retained by would have been property owners on  
4 Hurricane Katrina cases?  
5 A. Yes.  
6 Q. Now, in the instances where attorneys have  
7 retained you, do you know in each of those instances  
8 were the attorneys representing property owners?  
9 A. Yes.  
10 Q. In the two instances you were appointed as  
11 an umpire, were you put forth as an umpire candidate  
12 by the appraiser who had been retained by the  
13 property owner?  
14 A. I -- I don't really know which side,  
15 whether it be the plaintiff attorney or the public  
16 adjuster or the consumer, that actually brought my  
17 name to bear, but in answer to your question, I  
18 think I was brought to bear by the consumer's side  
19 of the fence.  
20 Q. Let me hand you what's been premarked as  
21 Defense Exhibit 268.  
22 (Exhibit 268 marked for identification.)  
23 Q. (By Mr. Gilmore) And this is a subpoena  
24 duces tecum, which just means a document subpoena  
25 that you were served with in this case. Do you

6 (Pages 18 to 21)

Lewis Edward O'leary, Jr. 10/6/2009

Page 22

1 recognize this?  
 2 A. Yes, sir.  
 3 Q. And you produced documents to Nationwide  
 4 and its attorneys in response to this subpoena,  
 5 didn't you, Mr. O'Leary?  
 6 A. I provided everything I had on this case  
 7 to the plaintiff attorney.  
 8 Q. And they, in turn, produced it to --  
 9 A. I sent them my original files. They  
 10 copied them and whether or not you got them or not  
 11 is between y'all.  
 12 MR. GILMORE: And, Mr. Brown, I will just  
 13 ask if there is -- I'm assuming that anything that  
 14 you received from Mr. O'Leary in this case, you  
 15 forwarded to us.  
 16 MR. BROWN: Uh-huh, yeah.  
 17 Q. (By Mr. Gilmore) Is there anything since  
 18 gathering documents and giving them to Sunquest's  
 19 counsel, any additional documents that you have or  
 20 generated in connection with the Carriage House  
 21 property that you have not since given them?  
 22 A. Other than the -- this fresh research that  
 23 I have begun via getting my hands on this Mr. Skees'  
 24 report, no, sir.  
 25 Q. And, Mr. O'Leary, I will just ask when you

Page 23

1 have -- as you are generating new documents in  
 2 connection with this additional investigation, I  
 3 just ask if you could continue to produce those in  
 4 response to this subpoena. It has an ongoing  
 5 obligation for you to produce those documents --  
 6 A. I would be happy to, sir.  
 7 Q. -- either to us directly or to plaintiff's  
 8 counsel.  
 9 A. Yes, sir.  
 10 Q. So beyond those documents that you just  
 11 started creating for this sort of new investigation  
 12 of vandalism instances in response to the Skees  
 13 engineering report, are there any other documents  
 14 that you have in connection with the Carriage House  
 15 property that you haven't produced in response in  
 16 this case?  
 17 A. Prior to getting my hands on this  
 18 gentleman's report, I -- I believe I have given you  
 19 everything I had that I relied upon that was in  
 20 print of any sort. I may have referenced -- you  
 21 know, I don't have the report here in front of me  
 22 that I produced, and I haven't spent a lot of time  
 23 with it in preparing for this, but if I referenced a  
 24 particular national standard or something like that,  
 25 and it's not been produced already, I'll go back and

Page 24

1 read my report, and if there is an inference to  
 2 something public domain that's out there that I  
 3 referenced, I will certainly produce it in a timely  
 4 manner, sir. I stand that I may have not attached  
 5 every national specification or public domain  
 6 information in the report as an attachment to the  
 7 report. I just don't remember right now. I produce  
 8 a lot of reports, and at 62, my memory is not quite  
 9 as good as it used to be.  
 10 Q. Well, we'll have an opportunity to go  
 11 through your report, so if there's --  
 12 A. All right, sir.  
 13 Q. -- anything that you see as we go through  
 14 it --  
 15 A. All right, sir.  
 16 Q. -- you can just let me know, and we will  
 17 ask -- if it's a -- beyond publicly available  
 18 documents, is there anything, either correspondence  
 19 or claims documents that you may not have relied on  
 20 in preparing your report but that you received and  
 21 at least looked at in connection with your work on  
 22 the Carriage House property?  
 23 A. Rather than take a chance, I just sent my  
 24 entire file down here. I -- I assume it's been  
 25 fully copied and provided, but I can't guarantee it.

Page 25

1 Rather than send two full copies to you and to  
 2 Mr. Brown, I just sent the originals.  
 3 Q. And I will accept Mr. Brown's  
 4 representation that he copied everything that he got  
 5 from you and provided to us. I'm going to hand you  
 6 what's been marked as Defense Exhibit 177.  
 7 (Exhibit 177 marked for identification.)  
 8 Q. (By Mr. Gilmore) Do you recognize this,  
 9 Mr. O'Leary, as your resume which you attached to  
 10 your report for the Carriage House property?  
 11 A. Yes, sir.  
 12 Q. Is this the most current version of your  
 13 resume?  
 14 A. I think it is.  
 15 Q. Well --  
 16 A. I should -- I should date them, shouldn't  
 17 I?  
 18 Q. Well, let me ask you this: When you  
 19 produced this in connection with your report, which  
 20 I believe was prepared in June of 2009, have you  
 21 since updated your resume?  
 22 A. I don't think so.  
 23 Q. Okay. The first heading under degrees,  
 24 you have two colleges listed, Jefferson Davis  
 25 College, General Engineering, 1967. Did I read that

7 (Pages 22 to 25)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 26</p> <p>1 correctly?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that's a -- is that a junior college?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So that general engineering degree, that's</p> <p>6 an associates degree?</p> <p>7 A. We're reaching back 40 years here now. I</p> <p>8 graduated from that junior college in -- in</p> <p>9 pre-engineering, which I think they called general</p> <p>10 engineering at that time. That was a long time ago.</p> <p>11 Q. I'm not going to ask you to name your</p> <p>12 professors. I just wanted to confirm --</p> <p>13 A. I would be in trouble if you did.</p> <p>14 Q. Your next entry is for Mississippi State</p> <p>15 University, Marine Engineering and Naval</p> <p>16 Architecture in 1972.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did I read that correctly?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And that is a bachelors degree, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And it's a bachelors degree in what was</p> <p>23 then called engineering technology; is that correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And that's different from an engineering</p>	<p style="text-align: right;">Page 28</p> <p>1 Engineering Department no longer offers this degree,</p> <p>2 right?</p> <p>3 A. That is correct.</p> <p>4 Q. And if you turn to the letter, which is</p> <p>5 the second page of Defense Exhibit 176, you see in</p> <p>6 the second full paragraph, the undergraduate</p> <p>7 coordinator, a man by the name of Robert A. Green --</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- he writes, "The degree awarded Mr.</p> <p>10 O'Leary is not an engineering degree, but is a</p> <p>11 degree in engineering technology. There is a</p> <p>12 significant distinction between the two categories,</p> <p>13 primarily in the preparation they give the students</p> <p>14 for future careers." Did I read that correctly?</p> <p>15 A. That is correct.</p> <p>16 Q. Is that consistent with your understanding</p> <p>17 of the difference between the degree you have and an</p> <p>18 engineering degree?</p> <p>19 A. That's why I sought this degree.</p> <p>20 Q. And if you skip down to the fourth</p> <p>21 paragraph, Mr. Green writes, "Although only the</p> <p>22 engineering programs and not the engineering</p> <p>23 technology programs at Mississippi State sought and</p> <p>24 received accreditation by the Accreditation Board</p> <p>25 for Engineering and Technology (ABET), and although</p>
<p style="text-align: right;">Page 27</p> <p>1 degree; is that right?</p> <p>2 A. They both are part of the College of</p> <p>3 Engineering. The industry applied pressure to the</p> <p>4 universities to provide what was referred to as an</p> <p>5 applied engineering degree in the day, someone that</p> <p>6 could go into the field and resolve problems of a</p> <p>7 practical nature. Many engineers are design</p> <p>8 engineers that are totally lost in the field, and</p> <p>9 this was an attempt to fill a gap that was -- that</p> <p>10 existed at that time.</p> <p>11 (Exhibit 176 marked for identification.)</p> <p>12 Q. (By Mr. Gilmore) I'm going to hand you</p> <p>13 what's been premarked as Defense Exhibit 176.</p> <p>14 A. Yes, sir.</p> <p>15 Q. Which I think you also produced with your</p> <p>16 report.</p> <p>17 A. Yes, sir.</p> <p>18 Q. This is a copy of a degree you earned from</p> <p>19 Mississippi State University; is that right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Along with a letter from the School of</p> <p>22 Engineering explaining the program in which you</p> <p>23 earned your degree, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Now, Mississippi State University</p>	<p style="text-align: right;">Page 29</p> <p>1 the definition is from 1996 and not 1972," I'm not</p> <p>2 sure if that's grammatical, but the part that I</p> <p>3 read, did I read that correctly --</p> <p>4 A. Yes, sir.</p> <p>5 Q. -- in terms of what is there?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Do you have any understanding why</p> <p>8 Mississippi State University did not either seek or</p> <p>9 receive accreditation for the engineering technology</p> <p>10 program in which you got your degree?</p> <p>11 A. First of all, I don't understand what he's</p> <p>12 writing there. There were several of us that got</p> <p>13 our PE stamps after graduation. We had to go an</p> <p>14 extra year. I think it was four years for the BS</p> <p>15 programs and five years for our program.</p> <p>16 Q. You say there are several of us who got</p> <p>17 their PE stamps. That's a professional engineering</p> <p>18 license?</p> <p>19 A. That is correct.</p> <p>20 Q. Do you have a professional engineering</p> <p>21 license?</p> <p>22 A. No, I do not.</p> <p>23 Q. What would you -- what would you have had</p> <p>24 to do in order to get a professional engineering</p> <p>25 license?</p>

8 (Pages 26 to 29)

Lewis Edward O'leary, Jr. 10/6/2009

Page 30

1 A. Stay in the field for five years. I left  
 2 the shipyard that I went to work for when I  
 3 graduated. I went to work for Bechtel, a worldwide  
 4 engineering construction firm after only two years.  
 5 Q. When you went to Bechtel, you stopped  
 6 doing engineering work?  
 7 A. No, sir, by no means. In fact, Bechtel --  
 8 are you familiar with Bechtel?  
 9 Q. I am actually. They're a client of our  
 10 firm so I'm generally familiar with them. I'm  
 11 sorry. Go ahead. I think you were about to say  
 12 something about Bechtel. I guess my -- the question  
 13 I was about to ask, and maybe you can address this,  
 14 is you had said that you would have needed to  
 15 complete five years of engineering.  
 16 A. In the marine industry.  
 17 Q. In the marine industry --  
 18 A. Yes, sir.  
 19 Q. -- in order to earn a PE?  
 20 A. That's correct.  
 21 Q. And is it the case that at some point  
 22 after, I guess you said two years, you stopped doing  
 23 naval engineering; is that correct?  
 24 A. Mechanical engineering is what it is.  
 25 Marine engineering is mechanical engineering. It's

Page 31

1 a focus on certain aspects of mechanical  
 2 engineering. A typical bachelor of science degree  
 3 in mechanical engineering would be geared for a  
 4 variety of directions for a student to go in after  
 5 graduation, to graduate work, to research areas that  
 6 we weren't considering. We got cause and origin  
 7 theory in college. They didn't. We were being  
 8 prepared for the practical world.  
 9 Q. Can you explain for the jury what is the  
 10 difference between what your professional licensing  
 11 or certification is that you hold versus what a  
 12 professional engineer does and has to continue to do  
 13 in order to be and stay a professional engineer?  
 14 A. Keep in mind I have worked with a lot of  
 15 engineers in my career by working for firms that  
 16 employ engineers far more than just myself, so I've  
 17 had a chance to get into the minutiae of what is  
 18 involved in getting a PE stamp. The PE program in  
 19 most states is geared toward a man having a good  
 20 solid understanding of design principles. The test  
 21 itself is geared toward a solid understanding of  
 22 design principles. None of the men I've ever spoken  
 23 to have ever told me there was a single question on  
 24 the PE exam that involved cause and origin, which is  
 25 the heart of field engineering.

Page 32

1 Q. Do you hold yourself out to be an engineer  
 2 professionally?  
 3 A. I put on my business card that I have a  
 4 degree in the field of architecture and mechanical  
 5 engineering because the program was a dual nature.  
 6 The state of North Carolina accepts that as a  
 7 legitimate title to put on my business card.  
 8 Q. My question was a little bit different.  
 9 In North Carolina where you live and work --  
 10 A. Yes, sir.  
 11 Q. -- if you tell a potential customer my  
 12 name is Lewis O'Leary and I'm an engineer, is that  
 13 improper since --  
 14 A. I would --  
 15 Q. -- you're not a PE?  
 16 A. I would tell these people that I am a  
 17 property loss consultant. In several of the states,  
 18 including Mississippi, I have been accused of  
 19 practicing engineering without a license, and I have  
 20 a letter from the state because they sent them a  
 21 copy of one of my reports, this is practicing  
 22 engineering without a license, and the board ruled  
 23 that was not true. I had signed it as a property  
 24 loss consultant. I had titled the report Report of  
 25 Findings. I did not cross the line, and I now have

Page 33

1 another letter from Louisiana that says the same  
 2 thing, that I know where the line is and apparently  
 3 I respect the line.  
 4 Q. Have you received a letter from the  
 5 Mississippi licensing board for engineering that  
 6 says you are permitted to continue doing the work  
 7 that you have done without violating the law against  
 8 practicing engineering without a license?  
 9 A. No, nor would they give me such a broad  
 10 letter.  
 11 Q. Well, have you received a letter from the  
 12 Mississippi licensing board specific to say an  
 13 allegation that you were practicing engineering  
 14 without a license that says what you were doing was  
 15 legal?  
 16 A. I -- I think -- now, I'll go over it  
 17 again. I think I answered your question where on a  
 18 Katrina claim, I generated a forensic report  
 19 addressing wind versus water, and it was used as a  
 20 basis to settle the claim, and after the claim was  
 21 settled, a copy of that report was sent anonymously  
 22 to the state board that this is practicing  
 23 engineering. The state board contacted me about it,  
 24 asked me questions and gave me a letter that I was  
 25 not practicing engineering without a license in the

9 (Pages 30 to 33)

Lewis Edward O'leary, Jr. 10/6/2009

Page 34

1 state.  
 2 Q. What was the name of the case that this  
 3 happened in?  
 4 A. It was an Allstate case.  
 5 Q. Do you remember the name of the property  
 6 owner for whom you had been retained?  
 7 A. I will give you a copy of the letter from  
 8 the state board if you'd like. I keep it with me.  
 9 Q. I would appreciate that, if you could  
 10 produce a copy of that letter that you're referring  
 11 to.  
 12 A. I will be happy to.  
 13 Q. Beyond that instance, were there any other  
 14 instances where you have been accused -- strike that  
 15 question. Have there been any other instances where  
 16 someone has sent a complaint to an engineering  
 17 licensing board concerning work you have done on  
 18 Hurricane Katrina claims?  
 19 A. I don't always know if a complaint is  
 20 filed unless the board contacts me.  
 21 Q. The ones you know about, are there any  
 22 others?  
 23 A. Here in Louisiana, I was accused of doing  
 24 the same thing, and I contacted the board and sent  
 25 them a copy of the full report with all attachments,

Page 35

1 and they ruled that I was not practicing engineering  
 2 without a license. And I have that letter, I  
 3 believe, with me also. By the way, you're going to  
 4 have to remind me later of what I'm promising to  
 5 give you copies of, so if you will --  
 6 Q. That's why my colleague here is diligently  
 7 taking notes --  
 8 A. Okay.  
 9 Q. -- to memorialize all of those  
 10 understandings.  
 11 A. Very good, sir.  
 12 Q. Other than these two instances that you  
 13 have mentioned, the one in Mississippi and the one  
 14 in Louisiana, are there other instances where a  
 15 complaint was sent to a licensing board concerning  
 16 your work on Katrina claims?  
 17 A. I was never contacted so I can't answer  
 18 the question other than to say the board has not  
 19 contacted me in Louisiana or Mississippi beyond what  
 20 I've already told you.  
 21 Q. And, again, I'll just -- you probably  
 22 understand this because you've been deposed before.  
 23 If I want you to guess or speculate, I will ask that  
 24 --  
 25 A. Yes, sir.

Page 36

1 Q. -- kind of question. If I don't, it's  
 2 just your personal knowledge. So I'm asking other  
 3 than the two that we mentioned, are you aware of any  
 4 other complaints being sent to an engineering  
 5 licensing board concerning any work you've done on  
 6 Hurricane Katrina claims?  
 7 A. No, sir.  
 8 Q. You mentioned earlier that there is a test  
 9 a candidate needs to take and pass, I imagine, in  
 10 order to become a professional engineer, a PE; is  
 11 that correct?  
 12 A. Actually there's two.  
 13 Q. Two tests?  
 14 A. One is called the EIT, engineering  
 15 training that they usually take shortly after  
 16 graduation. Then they have to complete a certain  
 17 number of years of experience and apply for  
 18 permission to sit for the PE exam.  
 19 Q. After you graduated, did you take the  
 20 first test, the EIT?  
 21 A. No, sir.  
 22 Q. You never sat for that?  
 23 A. No, sir.  
 24 Q. Have you ever studied for it?  
 25 A. I actually had the booklet one time,

Page 37

1 considered doing it, but I was a married student in  
 2 college, and I had one-and-a-half kids when I  
 3 graduated from college. It was on the list of  
 4 priorities, but it was kind of down there, and  
 5 working for firms like the shipyard and Bechtel,  
 6 there were tons of PEs. You have probably seen a  
 7 lot of engineering reports in your day, and a lot of  
 8 them have two signatures on them and only one PE  
 9 stamp, which suggests one guy went out there and did  
 10 the examination, prepared the material. The PE  
 11 reviewed it, approved it, countersigned it and put  
 12 his stamp on it. I did a lot of that. I was the  
 13 first signature on a lot of cases at both locations.  
 14 I didn't need a PE stamp is all I'm saying. I was  
 15 surrounded by PEs.  
 16 Q. Now, your reports in this case were not  
 17 reviewed and approved and stamped by a PE, correct?  
 18 A. They were reviewed by a PE, but they were  
 19 not stamped by a PE.  
 20 Q. Was that PE Dr. Neil Hall?  
 21 A. Dr. Neil Hall reviewed the report and  
 22 Terry Moran both.  
 23 Q. Did you consider asking him to approve it,  
 24 stamp it, and put his name on the report, Mr. Hall,  
 25 I'm sorry, or Mr. Moran? Both of them are PEs?

10 (Pages 34 to 37)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 38</p> <p>1 A. Dr. Hall is a qualified -- I'm not exactly 2 sure what that means -- PE in Mississippi for 3 testifying purposes. It's not a straight PE stamp, 4 but I don't know enough about this highly qualified 5 PE certification he has to comment on it. I would 6 not ask him to countersign it without a full PE 7 stamp, I guess would be the term for it, but I'm 8 struggling to define the term. Terry Moran, on the 9 other hand, is a full PE in Mississippi. I could 10 have asked him to countersign it, but I didn't. 11 Q. Did you ever suggest to Sunquest or 12 Sunquest's attorney that they should have a PE 13 review and approve and stamp on your report that you 14 produced on behalf of Sunquest in this case? 15 A. Can you rephrase the question, please? 16 Q. I'm not sure that I can. I'm just 17 wondering, in the course of your work and preparing 18 your report, did you ever suggest to Sunquest or 19 Sunquest's attorneys that they should retain a 20 licensed PE to review and approve and sign your 21 report for this case? 22 A. No. 23 Q. Were there any discussions that you are 24 aware of about whether there needed to be a licensed 25 PE to offer cause and origin engineering opinions in</p>	<p style="text-align: right;">Page 40</p> <p>1 damages would come to bear on something like that. 2 Certainly, I already knew how to measure a roof and 3 a room before I took the course. 4 Q. Does Leonard's School of Adjusting teach 5 you how to use -- well, how to prepare adjustment 6 estimates? 7 A. We did go through how to prepare estimates 8 at that time on a fundamental level. 9 Q. Is Leonard's School of Adjusting geared 10 primarily towards adjusters who work for insurance 11 companies or public adjusters? 12 A. I don't think they expressed an opinion 13 one way or the other as they were teaching us these 14 fundamentals. These fundamentals would be of value 15 regardless of which side of the fence you were 16 working. 17 Q. Well, did you get a sense of -- you know, 18 the people who attended Leonard's School of 19 Adjusting, were they primarily public adjusters? 20 A. Several of them were -- claimed to have 21 been contractors, several of them had no background 22 at all for construction. They just -- someone told 23 them that they ought to look at going into 24 adjusting, and to be honest with you, I just 25 don't -- the class, I'm going to guess and say was</p>
<p style="text-align: right;">Page 39</p> <p>1 connection with this case? 2 A. Both Dr. Hall and Terry Moran have been 3 active participants in this report, but they did not 4 countersign it. That was a decision made to do it 5 that way at some point. 6 Q. Let's go back to your resume, Defense 7 Exhibit 177. Under the second heading "Technical 8 Training," you have several items listed. The first 9 one is Leonard's School of Adjusting. 10 A. Yes, sir. 11 Q. And when did you attend Leonard's School 12 of Adjusting? 13 A. I'm going to guess and say '97. I have a 14 certificate here if you want a copy of it. 15 Q. I would appreciate that. Thank you. Can 16 you tell me briefly what you studied in Leonard's 17 School of Adjusting? 18 A. They talked about different types of 19 policies. They explained how to measure a roof and 20 how to measure a room, in essence, how to read a 21 policy and how to put an estimate together. 22 Q. Anything that you learned in Leonard's 23 School of Adjusting bear on your work in this case 24 for Sunquest and the Carriage House property? 25 A. In a broad sense, knowing how to adjust</p>	<p style="text-align: right;">Page 41</p> <p>1 25, 30 people. I didn't spend that much time 2 fraternizing with the group. I mean, there were 3 people that sat at the same table I sat at. These 4 would be fold-out leg tables, and there would be a 5 series of them, and then there would be another 6 series on the other side of the aisle, and I think 7 for the most part, any socializing I did was with 8 the guys sitting on either side of me. 9 Q. How long did you study at Leonard's School 10 of Adjusting? 11 A. It was a week-long school. 12 Q. The next item is HAAG Engineering seminars 13 on virtually all commercial and residential roof 14 systems. 15 A. Yes. 16 Q. Did I read that correctly? 17 A. Yes, sir. 18 Q. How many HAAG Engineering seminars have 19 you attended? 20 A. I don't know. I have a number of 21 certificates. I will be happy to give you copies of 22 them if you'd like. 23 Q. Do you believe those certificates for 24 seminars you've attended are relevant to the work 25 you've done for the Carriage House property?</p>

11 (Pages 38 to 41)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 42</p> <p>1 A. Yes, sir.</p> <p>2 Q. Then I would appreciate seeing those</p> <p>3 certificates --</p> <p>4 A. Okay.</p> <p>5 Q. -- if you wouldn't mind producing copies</p> <p>6 of those.</p> <p>7 A. All right, sir.</p> <p>8 Q. Can you tell me which certificates for</p> <p>9 which seminars you believe are relevant to the work</p> <p>10 you've done on the Carriage House property?</p> <p>11 A. These are roof seminars and these are</p> <p>12 composition shingle roofs on these buildings. They</p> <p>13 were covered not only in individual seminars but in</p> <p>14 the umpire -- not umpire, the inspector</p> <p>15 certification that I took in 2007.</p> <p>16 Q. Do you believe HAAG Engineering is a</p> <p>17 reputable engineering firm?</p> <p>18 A. HAAG has some very honorable people</p> <p>19 working for it, but like any other significant size</p> <p>20 organization, you've got stars, you've got duds and</p> <p>21 you've got everything in between.</p> <p>22 Q. It was reputable enough for you to seek</p> <p>23 out and participate in seminars that they offered,</p> <p>24 correct?</p> <p>25 A. I believe the firm is a reputable firm in</p>	<p style="text-align: right;">Page 44</p> <p>1 advise them on how to handle certain aspects of the</p> <p>2 claim. I grew up in Gulfport. Camille came right</p> <p>3 up my back door.</p> <p>4 Q. So by tech support, you mean essentially</p> <p>5 providing professional services of one sort or</p> <p>6 another?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And you say since Hurricane Camille in</p> <p>9 1969. Have you concentrated on hurricane or other</p> <p>10 windstorm claims in your professional work providing</p> <p>11 tech support for carriers, the appraiser and/or the</p> <p>12 umpire?</p> <p>13 A. After Camille petered out, this was</p> <p>14 something I did on the side. It was -- it was</p> <p>15 something that provided extra income for me. I</p> <p>16 didn't go back full time into the insurance industry</p> <p>17 until '94. Excuse me. Could we take a break here</p> <p>18 shortly?</p> <p>19 Q. Now, is a good time.</p> <p>20 A. Thank you, sir. I appreciate it.</p> <p>21 VIDEOGRAPHER: Off the record at 9:56.</p> <p>22 (Off the record.)</p> <p>23 VIDEOGRAPHER: Beginning tape two. On the</p> <p>24 record at 10:06.</p> <p>25 Q. (By Mr. Gilmore) Mr. O'Leary, we're still</p>
<p style="text-align: right;">Page 43</p> <p>1 answer to your question.</p> <p>2 Q. Now, the next item you have mentioned here</p> <p>3 is Roofing Consultants Institute. In fact, you're a</p> <p>4 member of the Roofing Consultants Institute; isn't</p> <p>5 that correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What is the Roofing Consultants Institute?</p> <p>8 A. It's a private organization that focuses</p> <p>9 on the advancement of roofing technology. It's an</p> <p>10 invitation only group.</p> <p>11 Q. When were you invited to join the Roofing</p> <p>12 Consultants Institute?</p> <p>13 A. I'm going to guess at this moment and say</p> <p>14 2001. Gary Cattell, the region director for Region</p> <p>15 1, which is where Raleigh is located, was my</p> <p>16 sponsor.</p> <p>17 Q. Next bullet point under technical training</p> <p>18 says, "Tech support for carriers, the appraiser</p> <p>19 and/or the umpire on 1800 plus or minus appraisals</p> <p>20 since Hurricane Camille (1969)." Did I read that</p> <p>21 correctly?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What do you mean by tech support?</p> <p>24 A. When you go around with an adjuster as</p> <p>25 either a contractor or a forensic consultant and</p>	<p style="text-align: right;">Page 45</p> <p>1 looking at your resume, Defense Exhibit 177. You</p> <p>2 say you've worked on approximately 1800 appraisals</p> <p>3 since Hurricane Camille; is that right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Of those, how many have you worked as an</p> <p>6 appraiser or consultant for the property owner?</p> <p>7 Give me an estimate.</p> <p>8 A. In getting into the wind certification</p> <p>9 directory, Florida has a school where they teach</p> <p>10 people to be an umpire, I was asked that same</p> <p>11 question, and I attempted to the best of my</p> <p>12 recollection, keeping in mind this was not going to</p> <p>13 be my career path for life. This was something that</p> <p>14 I did because it was a means to an end at some point</p> <p>15 in my life. It didn't become -- the tail didn't</p> <p>16 become the dog until '94, so a certain amount of</p> <p>17 guess work was involved in this, and I had</p> <p>18 guesstimated that about 55 percent, based heavily on</p> <p>19 what I did before '94, was working either directly</p> <p>20 with an adjuster or with a contractor that was</p> <p>21 working with an adjuster. About 55 percent of it, I</p> <p>22 had estimated, was with a carrier and this number is</p> <p>23 beginning to change as I spend more time working</p> <p>24 principally the consumer side of the fence. 55/45</p> <p>25 is what I had estimated for the directory when I got</p>

12 (Pages 42 to 45)

Lewis Edward O'leary, Jr. 10/6/2009

Page 46

1 into the program.  
 2 Q. And you say it's been changing since 1994;  
 3 is that correct?  
 4 A. I still work for some independent  
 5 adjusters and carriers. I went on an assignment in  
 6 Georgia last month for a carrier, but because most  
 7 of my business seems to come from the consumer side  
 8 of the fence, that percent -- those percentages will  
 9 likely within the next few years change to where it  
 10 will be more on the consumer side than the carrier.  
 11 Q. Of your current portfolio of cases or  
 12 claims that you're working on not just -- including  
 13 but not just Katrina cases, how many of those are  
 14 for the property owner approximately?  
 15 A. In excess of 90 percent. If I were to try  
 16 real hard to come up with a percentage, I would say  
 17 97, 98 percent.  
 18 Q. Now, over the years since you've started  
 19 working on appraisals, has most of your work been as  
 20 the actual designated appraiser?  
 21 A. Not initially. Back after Camille, I  
 22 didn't know enough about the insurance industry to  
 23 be the appraiser. It was a technical support role  
 24 only.  
 25 Q. Since 1994 say -- strike that question.

Page 47

1 Well, sitting here today, is most of your work on  
 2 appraisals as an appraiser?  
 3 A. Yes, sir.  
 4 Q. Would that be -- kind of a rough  
 5 percentage would be say 90 percent of your work when  
 6 you are working on an appraisal is as one of the  
 7 appraisers?  
 8 A. Yes, sir.  
 9 Q. And those would be overwhelmingly, I think  
 10 you said, 97 or 98 percent for property owners; is  
 11 that correct?  
 12 A. Yes, sir.  
 13 Q. Still working on your resume, the last  
 14 main bullet point under technical training lists  
 15 specific damage assessment schools, field training  
 16 and/or related academics. You list a number of sub  
 17 items underneath that. Are all of these in your  
 18 opinion relevant to the work you've done for the  
 19 Carriage House property?  
 20 A. No, sir.  
 21 Q. Which of these would be relevant?  
 22 A. The second one, 3-tab, architectural and  
 23 wood shingle roof systems. Excuse me. Mold  
 24 detection and assessment, mold assessment in  
 25 structures and roof systems, wood, light gauge and

Page 48

1 structural steel framing, analysis of seal failure  
 2 of double pane windows although these are not double  
 3 pane windows, and the last one, the field  
 4 engineering work, I did under others at Bechtel and  
 5 Pyramid Engineering & Construction in Houston.  
 6 Q. These categories where you've had --  
 7 you've participated in either damage assessment  
 8 schools, field training or related academics, are  
 9 these all some kind of formal training?  
 10 A. You're familiar with the term on-the-job  
 11 training?  
 12 Q. I am.  
 13 A. As a young engineer working for Bechtel,  
 14 you commonly work under a senior engineer. This  
 15 would be a good example of where I got formal field  
 16 training, on-the-job training in field engineering.  
 17 We -- we -- it's not always been called forensic  
 18 engineering. It was called field engineering for a  
 19 long time before they dressed the term up and  
 20 started calling it forensic engineering.  
 21 Q. Is field -- in your view, field  
 22 engineering and forensic engineering are synonymous?  
 23 A. Their world circles around cause and  
 24 origin in both cases.  
 25 Q. So when you talk about either field

Page 49

1 engineering or forensic engineering, you essentially  
 2 mean an engineering determination of cause and  
 3 origin of damage to a property; is that right?  
 4 A. Forensics is a field of engineering in my  
 5 opinion, so the term forensic engineering is  
 6 actually the use of the same word, but defining the  
 7 word a little more carefully to put the two  
 8 together.  
 9 Q. Well, how would you define forensic  
 10 engineering?  
 11 A. You go out into the field to analyze a  
 12 problem regarding why something that works on paper  
 13 doesn't work in the field. May I -- I just heard a  
 14 clicking noise which tells me I did not turn my  
 15 phone off. May I stop for a second and turn my  
 16 phone off?  
 17 MR. GILMORE: Let's go off the record.  
 18 VIDEOGRAPHER: Off the record at 10:13.  
 19 (Off the record.)  
 20 VIDEOGRAPHER: On the record at 10:13.  
 21 A. Typically in cause and origin work, you  
 22 begin with what is not, and you eliminate the  
 23 options down to what it might be, and then the  
 24 probability based on the evidence what it is most  
 25 likely with regard to what the issue is. It's an

13 (Pages 46 to 49)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 50</p> <p>1 analytical method of -- an analytical approach to a  2 practical problem, and it's a special type of  3 engineer commonly that is best suited for that.  4 Because I grew up as the son and grandson of a  5 builder, I came to the table with a practical  6 background for construction, and it seemed to be a  7 natural fit to make me the go to guy in a lot of  8 instances where if there was a field problem with  9 part of the design to send me down there to analyze  10 it.  11 Q. Turning to your resume and following up on  12 your discussion of cause and origin consulting, you  13 list as the last bullet under Accreditations,  14 Memberships and Affiliations, "Cause and origin  15 consultant to building products suppliers, roofers,  16 engineers, attorneys, general contractors, property  17 owners and insurance industry throughout the  18 southeast." Did I read that correctly?  19 A. Yes, sir.  20 Q. Would you say you have done more work as a  21 cause and origin consultant than you have as an  22 appraiser over the course of your career?  23 A. In my opinion, being a good appraiser is  24 to do cause and origin analysis of the damages,  25 whether it was more likely wind versus water,</p>	<p style="text-align: right;">Page 52</p> <p>1 providing just causation consulting services rather  2 than appraisal services?  3 A. With who?  4 Q. With your client.  5 A. I'm not exactly sure how to answer your  6 question, but I will attempt to answer it if you can  7 give me a little latitude here.  8 Q. And let me know if you need me to rephrase  9 it, but if you think you understand it, go ahead and  10 answer it. I will ask further questions if I'm not  11 sure that that's what I was getting at.  12 A. There are -- as you are probably aware,  13 there are not many carriers that will employ me for  14 whatever reason. I assume they have their reason,  15 but one of the reasons that were explained to me is  16 some of the carriers started drifting away from me  17 is I said what I thought, and I would take the  18 position if you didn't want to know exactly how I  19 felt about the loss, you shouldn't have hired me.  20 There are public adjusters that will not hire me for  21 that same reason. I am considered fiercely  22 independent by the industry. There are people that  23 work full time for the carriers who rely upon my  24 advice on how to handle certain issues today and the  25 carrier never knows they're using me because there's</p>
<p style="text-align: right;">Page 51</p> <p>1 whether it was more likely wear and tear versus  2 wind. I could give you several examples, but those  3 are two good ones. So my work as an appraiser  4 commonly involves production of a report, findings  5 that involves cause and origin.  6 Q. Is it fair to say in your view, an  7 appraiser does cause and origin analysis plus  8 something more?  9 A. An appraiser is -- is several things.  10 He's an estimator. He knows how to recognize  11 whether or not an estimate has problems or not and  12 how to address those problems along with cause and  13 origin work. He needs to be mindful also of whether  14 or not certain coverages exist. There's no sense in  15 analyzing damages where there is no coverage in my  16 opinion. No coverage meaning they're strictly the  17 main building coverage, the fences are not covered.  18 Accordingly, will I get out there and figure how  19 much it cost to replace these 500 feet of fences  20 that have been blown down if no coverage exists in  21 the policy. So an appraiser is a number of  22 different things if he is a well-rounded appraiser.  23 Q. Do you feel that you are fulfilling  24 different -- strike that. Do you feel you have a  25 different professional relationship or you are</p>	<p style="text-align: right;">Page 53</p> <p>1 no bill turned in. In other cases, there are bills  2 turned in where the assignment was sophisticated  3 enough they needed me to put hands on on the  4 property and render an opinion. I tell both sides  5 the same story. If you don't want me to render a  6 brutally honest opinion, don't hire me. And I use  7 that same mind set whether I'm an appraiser or  8 writing the forensic report. I think that is the  9 answer to your question. It keeps it simple for me.  10 Q. When you're acting as an appraiser versus  11 acting -- strike that question. Do you feel -- is  12 it your role to act as an advocate for your client  13 in either capacity, either as appraiser or as a  14 causation consultant?  15 A. I feel if I'm acting as an advocate for a  16 man's cause without any consideration what the  17 evidence says that it will cripple my credibility,  18 and it will cripple anyone else's credibility if  19 they gloss over evidence in an effort to fully  20 support their client's position.  21 Q. You testified earlier that nearly all of  22 your work on Hurricane Katrina cases has been for  23 property owners, correct?  24 A. Correct.  25 Q. Have you marketed your services to</p>

14 (Pages 50 to 53)

Lewis Edward O'leary, Jr. 10/6/2009

Page 54

1 insurance companies to work on Hurricane Katrina  
2 cases?  
3 A. I had lunch with one of the senior members  
4 of the firm that represents Nationwide in Raleigh  
5 last year seeing if it was possible to start getting  
6 some assignments again. I do that periodically, and  
7 his response was we love you, we know that you know  
8 what you're talking about, but it's difficult to use  
9 you and then turn around and challenge you on a case  
10 where we're on the other side of the fence from you.  
11 Q. Who was the individual?  
12 A. Drew Vanore, Crump, Vanore, Tierney &  
13 Brown, although the names may not be in the same  
14 order.  
15 Q. They are a law firm?  
16 A. Yes, sir, in -- based in Raleigh, and they  
17 represent Nationwide. In fact, I have a wholesome  
18 relationship with Scott Brown. I consider it  
19 wholesome. We trade joke e-mails.  
20 Q. He is another attorney at that law firm?  
21 A. He represents Nationwide or he did the  
22 last time I was involved in a case. I think six out  
23 of the last seven cases where I was involved with  
24 Nationwide in North Carolina, Scott and I sat down  
25 and had a cup of coffee and the appraisal never

Page 55

1 materialized.  
2 Q. How many actual retentions have you done  
3 for Nationwide over the course of your career?  
4 A. When you say retentions, I'm not sure I  
5 understand what you mean.  
6 Q. Sure.  
7 A. I didn't work for them. I did not work  
8 for them. I was the appointed appraiser by -- for  
9 the insured.  
10 Q. Have you ever been retained by Nationwide  
11 to work on any -- in any professional capacity over  
12 the course of your career?  
13 A. I don't think so.  
14 Q. Now, in this case, you're going to be  
15 presenting your opinions regarding cause and origin  
16 of damages to the Carriage House property, correct?  
17 A. I will be presenting it to the Carriage  
18 House property?  
19 Q. Sorry. You will be presenting your  
20 opinions regarding the cause and origin of damage to  
21 the Carriage House property in this case, right?  
22 A. Yes, sir.  
23 Q. You will also be presenting your opinions  
24 on the estimates for repairing damage to Sunquest  
25 property as a result of Hurricane Katrina, correct?

Page 56

1 A. Yes, sir.  
2 Q. In how many instances over the course of  
3 your career have you fulfilled those dual roles in a  
4 litigation matter for a property owner?  
5 A. As an estimator and as a forensic  
6 consultant?  
7 Q. That's correct.  
8 A. The -- the normal reason that I get as  
9 many assignments as I do is because of my blended  
10 background because I have the ability to put an  
11 estimate together and a forensic report together.  
12 It's one of the reasons I got as many assignments  
13 after Camille. Because of my construction  
14 background and my junior college degree, I could  
15 speak to a basic level of engineering concepts and  
16 put an estimate together on the local value for  
17 fixing these things we were talking about.  
18 Q. In your view, are the two roles, that is  
19 forensic consultant and appraiser, to have different  
20 levels of independence from the client performing  
21 those duties?  
22 A. Please reword that.  
23 Q. When you're acting as an appraiser, do you  
24 have a different level -- are you supposed to have a  
25 different level of independence from the client than

Page 57

1 when you are acting as a forensic consultant?  
2 A. An appraiser is supposed to be a third  
3 party, and because of that, most of my input that I  
4 received on what was and was not damaged was from  
5 people that don't work for Ralph Brockman. Tammy  
6 Crossley lost to World Claims in who would get to be  
7 the public adjuster to represent Ralph. If  
8 anything, she would, on the surface, be something  
9 less than totally in his corner. She lost. World  
10 Claims got the assignment. Turning to people like  
11 her and the contractor that repaired the property  
12 who has no dog in this hunt and Donna Bass who  
13 hasn't worked for Ralph since Katrina and works for  
14 another group now were the most likely candidates  
15 for someone in my capacity to turn to to find out  
16 the truth so to speak as opposed to either the  
17 Nationwide adjuster or Ralph Brockman and his  
18 employees.  
19 Q. I'm going to hand you what's been  
20 premarked as Defense Exhibit 183.  
21 (Exhibit 183 marked for identification.)  
22 Q. (By Mr. Gilmore) And this is a list of  
23 cases where you were retained as an expert in the  
24 past four years; is that correct?  
25 A. Yes, sir.

15 (Pages 54 to 57)

Lewis Edward O'leary, Jr. 10/6/2009

Page 58

1 Q. Is this an exhaustive list of such cases?  
 2 A. No. I've -- I've been on other cases  
 3 also. I just put this together in an attempt to  
 4 demonstrate that I've -- I've done it on both the  
 5 state and federal level.  
 6 Q. About how many additional cases that are  
 7 not listed here have you worked as an expert in the  
 8 past four years?  
 9 A. Can you define worked as an expert?  
 10 Q. Well, let's start in cases where losses  
 11 have been found and you had been retained by one  
 12 party or the other as an expert. How many of those  
 13 such instances have you worked in the past four  
 14 years beyond what are listed on this page?  
 15 A. I would hate to guess, but I would say I  
 16 could easily double this list.  
 17 Q. Is there any reason why you left the --  
 18 those other retentions off this list?  
 19 A. There's a lot of overlap in what I do.  
 20 When you can serve as an expert, you don't always  
 21 serve as an expert, you serve as the estimator or  
 22 the forensic consultant or as the appraiser. It's  
 23 all a matter of discretion where you draw the line  
 24 in terms of what I consider being retained  
 25 principally as an expert as opposed to one of these

Page 59

1 other categories which clearly overlap. Not  
 2 everybody can fill three different roles.  
 3 Q. How many additional cases have -- were you  
 4 actually designated as a testifying expert in the  
 5 litigation that aren't listed on this list?  
 6 A. I don't always know when I'm designated as  
 7 a testifying expert if I'm already involved in a  
 8 case as an appraiser or as the estimator. Maybe I  
 9 should know, but I don't always know. I can't give  
 10 you a firm answer to that, and I'm not trying to be  
 11 evasive, and I will -- as a follow up to this, if I  
 12 need to, I will attempt to define the list better  
 13 with the other cases on it. If that's important to  
 14 you, I will -- I will do my best.  
 15 Q. Well, I would ask if you're able to  
 16 supplement at least with any additional case where  
 17 you are designated by one party as someone who would  
 18 testify at trial --  
 19 A. Okay.  
 20 Q. -- I would ask if you could produce a  
 21 supplemented report and provide that to Mr. Brown so  
 22 that they can produce it to Nationwide.  
 23 A. I will do my best, sir.  
 24 MR. BROWN: Just to be sure I'm clear, I'm  
 25 going to repeat back what I think you said.

Page 60

1 MR. GILMORE: Sure.  
 2 MR. BROWN: You want any additional cases  
 3 not on this D-183 where Mr. O'Leary was designated  
 4 in a pending --  
 5 MR. GILMORE: Litigation matter.  
 6 MR. BROWN: -- litigation matter as an  
 7 expert by one party or the other.  
 8 MR. GILMORE: That's correct.  
 9 MR. BROWN: Okay.  
 10 MR. GILMORE: Yeah.  
 11 A. That -- that will require going back to  
 12 attorneys and asking them did you put me on your  
 13 list of experts to testify and them letting me know  
 14 because some of these files have been closed out for  
 15 a few years. It's not something I can get  
 16 instantaneously for you, but I will make the attempt  
 17 to be more comprehensive.  
 18 Q. (By Mr. Gilmore) Well, to start, would  
 19 you be able to more readily prepare a list of at  
 20 least those cases in which you've given a deposition  
 21 or testified at trial in the past four years?  
 22 A. Interestingly enough, every case I've ever  
 23 been involved in never made it to trial, so we can  
 24 scratch that one. I've never climbed on the -- in  
 25 the witness box and ever testified in an open trial.

Page 61

1 Somehow it always got worked out before it got that  
 2 far.  
 3 Q. Okay. As an expert?  
 4 A. As anything. I say anything, I -- I've  
 5 not testified as an estimator. I've not testified  
 6 as an appraiser. I've not testified as an expert or  
 7 as a contractor. I've never climbed into a witness  
 8 box in an open court proceeding to testify on my  
 9 expertise at any level.  
 10 Q. Okay. But you've been a defendant in some  
 11 cases?  
 12 A. Yes, sir, yes, sir.  
 13 Q. Okay. Well, if -- if you can at least  
 14 supplement your list with any cases where you have  
 15 given a deposition in litigation matters in the past  
 16 four years.  
 17 A. I will -- I will do my best to -- to fill  
 18 in the blanks.  
 19 Q. On the -- still looking at Defense  
 20 Exhibit 183.  
 21 A. I'm sorry.  
 22 Q. It's quite all right. The cases that are  
 23 listed here, how many of these pertain to Hurricane  
 24 Katrina? I would assume it's only the St. Charles  
 25 Parish Hospital versus United Fire Group case?

16 (Pages 58 to 61)

Lewis Edward O'leary, Jr. 10/6/2009

Page 62

1 A. I -- I would suspect that you are correct.  
 2 I think the case above it was an Ivan case.  
 3 Q. Right. Since all of the other cases are  
 4 not in Louisiana, Mississippi or Alabama. There are  
 5 other cases, though, that you've given depositions  
 6 in that were Hurricane Katrina cases, right?  
 7 A. I think so.  
 8 Q. The Kuhn case is one, for instance, I know  
 9 of.  
 10 A. Yes.  
 11 Q. The St. Charles Parish Hospital case that  
 12 you have listed here, the attorneys for the property  
 13 owner of that hospital, those -- that was Mr. Brown  
 14 right here, right?  
 15 A. Yes, sir.  
 16 Q. And how many cases over the years have you  
 17 worked with Mr. Brown and his firm?  
 18 A. Two.  
 19 Q. This one, the Sunquest case --  
 20 A. I'm sorry, not counting this one. I  
 21 thought that was your question. I'm sorry.  
 22 Q. I should have been more clear. In  
 23 addition to these cases for Sunquest --  
 24 A. Two.  
 25 Q. What was the other one besides the St.

Page 63

1 Charles Parish Hospital?  
 2 A. Whitfield versus United Fire.  
 3 Q. Did that case also involve a Katrina  
 4 damage claim?  
 5 A. Actually it was a tornado that came  
 6 through the following spring after Katrina.  
 7 Q. How did you first come to work for  
 8 Mr. Brown's firm?  
 9 A. Mr. Brown represented St. Charles Parish  
 10 Hospital. St. Charles Parish Hospital was a client  
 11 of a local public adjusting firm named Dallas Loss  
 12 Consultants. They named me as the appraiser on the  
 13 claim, and because he was the attorney for the  
 14 client, we ended up working together. There's  
 15 actually a third case that you and I worked on  
 16 together on Laurel Street. I can't remember the  
 17 customer's -- it started with a B. It was a Katrina  
 18 case.  
 19 Q. That was in -- here in New Orleans?  
 20 A. Yes, it was a residence. I want to say  
 21 Babineaux, but that's not -- Sherry --  
 22 Q. Counsel is indicating he knows the name.  
 23 MR. BROWN: Barios, wasn't it?  
 24 A. Yeah.  
 25 MR. BROWN: Barios.

Page 64

1 MR. GILMORE: Thank you.  
 2 Q. (By Mr. Gilmore) Those three cases beyond  
 3 the Sunquest cases, they were all for the property  
 4 owner?  
 5 A. That is correct.  
 6 Q. The cases that you have listed here on  
 7 Defense Exhibit 183, how many of those involved  
 8 appraisals?  
 9 A. Becky Hess was not an appraisal.  
 10 Philadelphia Baptist Church, there was movement  
 11 toward appraisal, but it never occurred. There was  
 12 an appraisal done on Big Bike, but it was before I  
 13 came along. Paramount Food, there was talk of  
 14 appraisal, but it never occurred.  
 15 Q. Any other cases you have listed here where  
 16 you were involved in appraisal?  
 17 A. These cases for the defense here at the  
 18 bottom, I was not -- I was used strictly as an  
 19 expert.  
 20 Q. I hand you what's been marked as Defense  
 21 Exhibit 289 and 290.  
 22 (Exhibit 289 marked for identification.)  
 23 (Exhibit 290 marked for identification.)  
 24 Q. (By Mr. Gilmore) You recognize these as  
 25 pages from the web site for your company,

Page 65

1 Probuilders; is that correct, Mr. O'Leary?  
 2 A. Yes, sir.  
 3 Q. When did you start Probuilders?  
 4 A. Well, Probuilders, the one named  
 5 Probuilders on the business card, which is not the  
 6 full and complete name of my company, is a single  
 7 word for a reason and that is because this company  
 8 evolved, and in the evolution, it had different  
 9 names, all of which involved the one word  
 10 Probuilders in it.  
 11 Q. What today is its current full name?  
 12 A. Well, the consulting company is  
 13 Probuiders of the Carolinas, Incorporated. The  
 14 licensed general construction arm is Probuiders of  
 15 Johnson County. For a variety of reasons, I was  
 16 encouraged to segregate the two entities, and I did.  
 17 Q. And when did you first start the company  
 18 that today is called Probuiders?  
 19 A. The company Probuiders, Incorporated  
 20 existed when I came to North Carolina in 1996.  
 21 Q. Did you join it as an employee at that  
 22 time?  
 23 A. It was a four-man partnership. A man  
 24 named Stanley Soble, a Greensboro, North Carolina  
 25 resident, had that company name and was operating it

17 (Pages 62 to 65)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 66</p> <p>1 under that company name. He was a close personal 2 friend of one of the other three members of the 3 firm, and we came to North Carolina to operate as 4 support for Hurricane Fran writing technical reports 5 and estimates period. 6 Q. If you look at the second page of Defense 7 Exhibit 289, there is a heading entitled "Your 8 Rights," correct? 9 A. Uh-huh (affirmative response). Yes, sir. 10 Q. Under that heading in your web site for 11 your company, it says, "Regardless of the reason for 12 your claim, if you are at a point where you believe 13 that you have more of a claim than the insurance 14 company agrees to, and you would like to explore 15 your options as to how to proceed in the least 16 expensive and quickest manner, Probuders can 17 help." Did I read that correctly? 18 A. Yes, sir. 19 Q. This is addressed to property owners, 20 correct? 21 A. That is correct. 22 Q. Property owners who are in a dispute with 23 their insurance company regarding a claim, correct? 24 A. That is correct. 25 Q. And you are marketing Probuders, your</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. The second one says, "The adjuster lacks 2 experience and/or training in the subject matter." 3 Did I read that right? 4 A. Yes, sir. 5 Q. The third one says, "The damages are the 6 result of more than one cause and the adjuster does 7 not understand how to apply good settlement 8 practices to the claim." Did I read that correctly? 9 A. Yes, sir. 10 Q. And the fourth one says, "The adjuster's 11 guidelines for adjusting are inappropriate." Did I 12 read that -- 13 A. Yes. 14 Q. So you list four categories of disputes 15 between property owners and insurance companies, 16 correct? 17 A. I'm saying that most of the claims fall 18 into one of these four categories. 19 Q. All right. So some of the claims could 20 involve more than one of these categories? 21 A. Which I said also, yes, sir. 22 Q. Okay. Now, each of these bullet points 23 deals with something that either the adjuster or the 24 carrier did that was incorrect or improper, correct? 25 A. That is correct.</p>
<p style="text-align: right;">Page 67</p> <p>1 company's services to those property owners? 2 A. That is correct. 3 Q. At the end of that section, there is a 4 link entitled "More," correct? 5 A. Yes, sir. 6 Q. And that takes someone on your web site to 7 what is marked as Defense Exhibit 90, correct? 8 A. Yes, sir. 9 Q. And that page is entitled "Benefits of 10 Insurance Consulting," correct? 11 A. Yes, sir. 12 MR. BROWN: 290? 13 MR. GILMORE: Yes, Defense 290. 14 Q. (By Mr. Gilmore) And under "Benefits of 15 Insurance Consulting" in your company's web site, it 16 says, "Most of the disputes between property owners 17 and their insurance carriers fall into one or more 18 of the following categories." Did I read that 19 correctly? 20 A. Yes, sir. 21 Q. And there are four -- four bullet points 22 underneath that. The first one says, "The adjuster 23 was too rushed to look at all of the evidence," 24 correct? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Now, when you say most of the disputes 2 between property owners and their insurance carriers 3 in your opinion involve something that the adjuster 4 or the carrier did that was incorrect, can you 5 estimate what percentage you mean by most such 6 disputes? 7 A. Keep in mind, I have been involved in many 8 storms. I've been involved with many different 9 adjusters, some of which were an auto adjuster 10 yesterday and now they're a property adjuster today, 11 some of which were a casualty adjuster yesterday and 12 now they're a property adjuster today, some of which 13 have absolutely no adjusting experience or 14 construction experience whatsoever yesterday, and 15 now they're a property adjuster today. This is real 16 world. I don't think there's a carrier out there 17 that will deny that after a major hurricane when 18 you're attempting to assemble a major staff of 19 people to go and adjust claims on a timely basis 20 that sometimes they pull people in that probably are 21 not well qualified to do what they are about to do. 22 And part of this is to tell people the carriers are 23 not out there necessarily (unintelligible) but 24 things happen sometimes. They're sending people out 25 there that are too rushed or not qualified enough or</p>

18 (Pages 66 to 69)

Lewis Edward O'leary, Jr. 10/6/2009

Page 70

1 the instructions being given to them are not a good  
2 set of instructions for what they're supposed to be  
3 doing. All of these things point in a different  
4 direction than they're being cheated.

5 Q. Can you tell me -- can you put an estimate  
6 on how many cases in your opinion -- what percentage  
7 of disputes between property owners and insurance  
8 carriers involve one of these -- one or more of  
9 these four instances where the adjuster or the  
10 insurance carrier does something wrong? Is it  
11 70 percent or 80 or 90 percent?

12 A. Not all of it is doing something wrong.  
13 If a man is not qualified to be doing what he's  
14 doing, but he was thrown into it because he was a  
15 staff adjuster who was available, we need you,  
16 you're going, he didn't necessarily do anything  
17 wrong. Ignorance of how to do the job correctly  
18 doesn't mean fundamentally that he's doing something  
19 wrong on that customer's claim. He's doing the best  
20 he can. Through no -- through no one's fault, some  
21 claims are handled poorly. You give an adjuster far  
22 too many assignments than he can truly handle, he's  
23 going to do the best he can to bring them all home,  
24 but he may mess up on half of them because he just  
25 didn't look at everything. This property that we're

Page 71

1 involved in here, it appears as though there's a lot  
2 of cut and paste involved on the Nationwide  
3 adjuster's estimate where he just basically  
4 duplicated the same damages over and over again to  
5 get through the estimate more quickly. Does that  
6 mean that he tried to cheat the person, I don't  
7 think so. He was just trying to do his job.

8 Q. Well, Mr. O'Leary, I appreciate that you  
9 don't think my client tried to cheat your client. I  
10 would ask you just so we can all wrap this up in a  
11 timely way, and we can go more efficiently --

12 A. Yes, sir.

13 Q. -- I will ask a question, if you can give  
14 a substantive answer. If you don't understand my  
15 answer [sic], let me know.

16 A. All right, sir.

17 Q. All I'm asking is we went through these  
18 four categories where the adjuster of an insurance  
19 company was doing something incorrect or  
20 inappropriate. You say most disputes between  
21 property owners and insurance carriers fall into one  
22 or more of these categories.

23 A. Yes, sir.

24 Q. Can you give me an estimate when you say  
25 most, do you mean 70 percent, 80 percent,

Page 72

1 90 percent? That's all I'm asking for is an  
2 estimate of what percentage of these kinds of cases  
3 fall into one or more of these categories in your  
4 opinion?

5 A. The ones that I get involved in, keep in  
6 mind, I don't get involved in a claim normally until  
7 it is at some sort of impasse where they go out and  
8 try to hire a high-priced consultant to try to help  
9 resolve the impasse.

10 Q. As I said earlier today, just to the best  
11 of your personal knowledge.

12 A. In excess of 80 percent.

13 Q. So in the other -- in your opinion, in the  
14 other 20 percent of cases -- well, strike that. In  
15 your opinion, there are only about 20 percent of  
16 cases involving disputes between property owners and  
17 insurance carriers where the adjuster and insurance  
18 carrier did do what they were supposed to in  
19 adjusting the claim; is that correct?

20 A. There are categories I left out here,  
21 which will affect the percentages that you're now  
22 asking me to answer you, one of which is the unit  
23 costs are unrealistic that are being presented,  
24 which can also cause a dispute. So when you say  
25 where the carrier did nothing wrong at all, and I

Page 73

1 may be paraphrasing what you just asked me. If I'm  
2 going too far with my paraphrasing, please tell me  
3 so. Things like that also crop up to cause a  
4 dispute. It's not listed on here.

5 Q. Still working on Defense Exhibit 290, and  
6 you discuss the appraisal process below that,  
7 correct?

8 A. Yes, sir.

9 Q. And you say, "This process allows for both  
10 the property owner and the insurance carrier to  
11 choose third parties called appraisers, who, in  
12 turn, choose an umpire to serve as a tie breaker  
13 should the two appraisers disagree regarding what  
14 should have been awarded for the claim." Did I read  
15 that correctly?

16 A. Yes, sir.

17 Q. What does the term third party mean to  
18 you?

19 A. It has a couple of designations. One is  
20 the third appraiser. Another is he's the umpire.  
21 Some people refer to him as the tie breaker.

22 Q. Does that mean these individuals are not  
23 to be affiliated with either party?

24 A. Correct.

25 Q. Each -- each of the three people involved

19 (Pages 70 to 73)

Lewis Edward O'leary, Jr. 10/6/2009

Page 74

1 in the appraisal process should have some sort of  
 2 independence and impartiality from the parties  
 3 involved in the dispute; is that correct?  
 4 A. Would you rephrase that, please? I'm --  
 5 and my apologies.  
 6 Q. Sure, I'll repeat. I will try and  
 7 rephrase my question. Each of the three individuals  
 8 involved in an appraisal, the two appraisers and the  
 9 umpire should have -- should be independent and  
 10 impartial in conducting their duties. Is that fair  
 11 to say?  
 12 A. Independent, yes, impartial, yes.  
 13 Q. We talked a little bit about what kinds  
 14 of -- I'm sorry, how many Hurricane Katrina claims  
 15 you've performed some professional services for. I  
 16 wanted to find out a little bit about the types of  
 17 those claims you've worked on. First of all, what  
 18 kinds of properties involved -- were you involved  
 19 with working on in Hurricane Katrina claims? And by  
 20 type of property, I mean residential or commercial?  
 21 A. Both.  
 22 Q. About what percentage of claims that you  
 23 worked on were residential properties?  
 24 A. When you say residential, apartments are  
 25 residential style construction. The same type of

Page 75

1 mind set in addressing a home would apply for the  
 2 most part on an apartment complex because they're  
 3 built basically the same way, stick built  
 4 construction, whereas a commercial building may be  
 5 made of red iron and light gauge steel and flat  
 6 roofs. Am I correct in assuming that when you say  
 7 what percentage residential, that anything built  
 8 like a residence?  
 9 Q. I'll use that as your definition. That's  
 10 your definition, you know, what percentage of claims  
 11 that you worked on were residential versus  
 12 commercial claims?  
 13 A. I would say roughly two-thirds were  
 14 residential style construction.  
 15 Q. Again, in terms of the overall number of  
 16 Hurricane Katrina claims you worked on, how many of  
 17 those involved total losses, what's known as a slab  
 18 claim?  
 19 A. Off the top of my head, I'm going to say  
 20 at least a half a dozen.  
 21 Q. So most of the claims you've worked on  
 22 have been standing losses?  
 23 A. That is correct.  
 24 Q. Have you estimated how much you have  
 25 earned in performing professional services in

Page 76

1 connection with Hurricane Katrina claims?  
 2 A. No, sir.  
 3 Q. Can you come up with just a ballpark  
 4 number? Would it be more than 100,000?  
 5 A. Yes, sir.  
 6 Q. Would it be more than 500,000?  
 7 A. I don't think so.  
 8 Q. Would it be somewhere in the range of 300  
 9 to 500,000?  
 10 A. If I were to guess, I would say yes.  
 11 Q. Can you describe a little bit for me how  
 12 you believe the appraisal process is supposed to  
 13 unfold?  
 14 A. In Mississippi?  
 15 Q. In Mississippi. For instance, in this  
 16 case, I mean, or any of the cases that you've  
 17 performed appraisals for Hurricane Katrina cases.  
 18 MR. BROWN: Could we go off the record for  
 19 just a second?  
 20 VIDEOGRAPHER: Off the record at 10:53.  
 21 (Off the record.)  
 22 VIDEOGRAPHER: On the record at 11:01.  
 23 Q. (By Mr. Gilmore) Mr. O'Leary, when were  
 24 you first retained by Sunquest to do work on this  
 25 case?

Page 77

1 A. I believe it was May 2007.  
 2 Q. Can you tell me how you came to begin  
 3 doing work for Sunquest on this property?  
 4 A. Prior to being involved with Sunquest, I  
 5 was working in a technical support role for Excel  
 6 Public Adjusters and a couple of attorneys on the  
 7 Coast who knew Greg Stewart and David Pilcher, the  
 8 two out of three of the men that formed the  
 9 partnership that bought these properties, I had been  
 10 to the property at least a couple of times prior to  
 11 ever meeting or talking to Ralph. In fact, the  
 12 buyers recommended me to Mr. Brockman as someone  
 13 that may be able to assist him in resolving his  
 14 outstanding insurance claim.  
 15 Q. You had been doing consulting work for the  
 16 buyers of the Carriage House property before you  
 17 were retained by Sunquest; is that correct?  
 18 A. No, I was doing consulting work for a  
 19 public adjusting firm that was heavily involved with  
 20 these buyers on multiple properties. These -- the  
 21 buyers owned multiple multi-family properties just  
 22 as Mr. Brockman owns multiple multi-family  
 23 properties, and in my association with the public  
 24 adjuster, she introduced me to the buyers to provide  
 25 consulting services on some of their matters, who,

20 (Pages 74 to 77)

Lewis Edward O'leary, Jr. 10/6/2009

Page 78

1 in turn, recommended me to Mr. Brockman on his two  
2 properties that he had either already sold or was --  
3 I'm reasonably sure he had already sold them by that  
4 point to these people, because when I first saw  
5 them, they were largely finished in terms of the  
6 restoration work.

7 Q. So the first time that you saw the  
8 Carriage House property in person was May of 2007?

9 A. I think it was March. It was sooner than  
10 May. Let's just put it that way.

11 Q. By then, the repairs were essentially  
12 complete; is that --

13 A. Yes, sir, yes, sir.

14 Q. How many times have you visited the  
15 Carriage House property in person?

16 A. I'm going to say at least five times,  
17 maybe six.

18 Q. Can you describe what you did on your site  
19 visits to the Carriage House property?

20 A. Examination of evidence.

21 Q. Can you explain what examination of  
22 evidence entailed?

23 A. First of all, some of the assertions I've  
24 made in the report are based upon physically going  
25 up to things like windows and looking at them, the

Page 79

1 detail of construction between the window and the  
2 surrounding portion of the weather envelope, which  
3 is the exterior of the building, looking at the roof  
4 construction, looking at the flashing details,  
5 looking at the weather stripping design around the  
6 doors, whether or not the doors fit snugly in the  
7 casing that they operate in.

8 Q. All of those observations that you just  
9 listed were made of the property after the repairs  
10 had been essentially completed, correct?

11 A. That is correct.

12 Q. You -- you never visited the property  
13 following the storm before the property was  
14 repaired, correct?

15 A. That is correct.

16 Q. Did you make any effort to determine the  
17 differences between the post repair state of the  
18 property versus how the property existed prior to  
19 Hurricane Katrina?

20 A. Yes, I did.

21 Q. What efforts did you make?

22 A. Interviewing people who would have  
23 specific knowledge of what the condition was of the  
24 property before the hurricane.

25 Q. Anything else other than interviewing

Page 80

1 people?

2 A. Well, there -- a lot of the photographs  
3 that were taken by both sides show areas where there  
4 may be a water stain, but then there is other areas  
5 that -- in that same picture where there is no  
6 damage, and those photographs in the undamaged areas  
7 suggest that's what it looked like before the storm.

8 Q. What did you start doing for Sunquest when  
9 you were first retained by them in May of 2007?

10 A. I don't remember mechanically exactly what  
11 was said in which phone conversation and which  
12 meeting. I can only give you an overview of what  
13 was said over a series of phone conversations and  
14 meetings without regard to what was said in which  
15 particular phone call or which particular meeting.

16 To the best of my ability, Mr. Brockman wanted to  
17 know did he have a case regarding substantially more  
18 money than what Nationwide had offered him.

19 Q. When you were first retained, did you  
20 believe that you would ultimately be used as a  
21 testifying expert in litigation?

22 A. No.

23 Q. Have you had any such discussions about  
24 that where you -- with Sunquest or Sunquest's  
25 attorneys?

Page 81

1 A. At that point in time, the -- the Munn  
2 decision had not become a significant issue in the  
3 marketplace. Appraisals were being conducted in a  
4 more "traditional manner." I had completed prior to  
5 this case two appraisals on Nationwide cases that  
6 were conducted in the "traditional manner" where the  
7 two sides agreed to let the appraisers determine the  
8 damages as the result of wind and wind alone. So my  
9 thought process, if you will, you were asking me  
10 about that, I think, was to determine whether or not  
11 it was a legitimate case for appraisal using a  
12 traditional method of appraisal, and it seemed to be  
13 a legitimate case for such.

14 Q. When you use the phrase "traditional  
15 method of appraisal," do you mean appraising damages  
16 attributable just to a covered loss, in this  
17 instance, wind or wind driven rain?

18 A. That is the traditional method that dates  
19 back. I mean, I've got forms created within the  
20 industry that date back to World War II where it  
21 states this is the peril we want y'all to look at  
22 and tell us what the damage is as a result of that  
23 particular peril.

24 Q. So when you first began work for Sunquest,  
25 your intent was to appraise the damages caused by

21 (Pages 78 to 81)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 82</p> <p>1 wind or wind driven rain alone; is that correct?</p> <p>2 A. You're using a term that is hotly</p> <p>3 contested in this industry, wind driven rain. I</p> <p>4 will stop short of that and say wind.</p> <p>5 Q. Well, just so there's no ambiguities in</p> <p>6 our -- as I ask questions and you give answers, when</p> <p>7 you talk about wind causing the damage, that</p> <p>8 includes the force of air being pushed against the</p> <p>9 structure, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. It also includes rain in a wind storm, for</p> <p>12 instance, that might breach and damage the interior</p> <p>13 of the structure; is that correct as well?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is there any other types of damage that</p> <p>16 you would group under the heading winds beyond those</p> <p>17 two types?</p> <p>18 A. The force of wind, I would -- and ensuing</p> <p>19 damages as the result of, or as policies normally</p> <p>20 say, caused by or the result of wind.</p> <p>21 Q. So resulting damages from those two types</p> <p>22 that we just discussed?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So getting back to your understanding when</p> <p>25 you were first retained by Sunquest was to appraise</p>	<p style="text-align: right;">Page 84</p> <p>1 mentioned in the correspondence in terms of what I</p> <p>2 felt like the damages were.</p> <p>3 MR. GILMORE: Let's go off the record and</p> <p>4 change the tape.</p> <p>5 VIDEOGRAPHER: Off the record at 11:12.</p> <p>6 End of tape two.</p> <p>7 (Off the record.)</p> <p>8 VIDEOGRAPHER: Beginning tape three. On</p> <p>9 the record at 11:13.</p> <p>10 Q. (By Mr. Gilmore) We're going to start</p> <p>11 looking at your report in a moment. I just want to</p> <p>12 ask you beyond the expert report that you prepared</p> <p>13 and that's been served on Nationwide, do you have</p> <p>14 any earlier drafts of that report that you've</p> <p>15 generated?</p> <p>16 A. I don't -- I don't recall ever publishing</p> <p>17 a draft of that report. Internally within my</p> <p>18 office, I'll produce drafts, and my wife who can</p> <p>19 spell 1000 times better than I, and infinitely</p> <p>20 better with grammar and sentence structure will mark</p> <p>21 it up for me, and based on that type of draft</p> <p>22 arrangement, I'll publish a finished product.</p> <p>23 Q. Do you still retain in your records the</p> <p>24 prior drafts of your final finished expert report in</p> <p>25 this case?</p>
<p style="text-align: right;">Page 83</p> <p>1 the damages caused by wind, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Prior to you preparing the expert report</p> <p>4 on behalf of Sunquest in this case for the Carriage</p> <p>5 House property, did you generate other written work</p> <p>6 in connection with furnishing professional services</p> <p>7 for Sunquest?</p> <p>8 A. There was correspondence involved in my</p> <p>9 exchanges with Ralph.</p> <p>10 Q. Do you still have copies of that</p> <p>11 correspondence?</p> <p>12 A. A full copy of my file has been made.</p> <p>13 VIDEOGRAPHER: Two minutes.</p> <p>14 A. What -- whatever was copied is what was in</p> <p>15 my files.</p> <p>16 Q. (By Mr. Gilmore) So all of that</p> <p>17 correspondence from before the time you began</p> <p>18 working on your expert report in this case, you</p> <p>19 believe was copied and given to counsel for</p> <p>20 Sunquest?</p> <p>21 A. I believe so, sir.</p> <p>22 Q. And beyond correspondence with</p> <p>23 Mr. Brockman, any other kind of written work product</p> <p>24 such as initial estimates or appraisals?</p> <p>25 A. I think the initial estimates were</p>	<p style="text-align: right;">Page 85</p> <p>1 A. No, sir. You know, we're talking about</p> <p>2 sentence structure and spelling. I would not</p> <p>3 normally keep those type of drafts.</p> <p>4 Q. Would you -- you would -- you believe that</p> <p>5 you would have thrown away any such prior drafts?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What about saved on your computer, do you</p> <p>8 have various versions --</p> <p>9 A. No, sir.</p> <p>10 Q. -- of an electronic document on your</p> <p>11 computer?</p> <p>12 A. I believe I save it over the original</p> <p>13 document which, in essence, wipes out the original</p> <p>14 document.</p> <p>15 Q. Prior to finalizing and signing your</p> <p>16 expert report in this case, did you send initial</p> <p>17 drafts of the report to anyone at Sunquest or</p> <p>18 Sunquest's attorneys?</p> <p>19 A. I sent it to the engineers for review.</p> <p>20 Neither one of them provided me with any changes.</p> <p>21 They felt that the report should stand as written,</p> <p>22 so the report that was sent to them was the report</p> <p>23 that was published.</p> <p>24 Q. Have you been asked -- beyond your report,</p> <p>25 have you been asked to prepare any future reports</p>

22 (Pages 82 to 85)

Lewis Edward O'leary, Jr. 10/6/2009

Page 86

1 of, for instance, rebuttals to any of Nationwide's  
 2 experts?  
 3 A. The reports given to me were given to me  
 4 with the inference look this over and see if there's  
 5 anything that you need to respond to, so I guess you  
 6 could say yes, I have been asked to -- to work up a  
 7 rebuttal.  
 8 Q. And specifically have you been asked to  
 9 prepare a written rebuttal report if you know?  
 10 A. No structure of rebuttal has been  
 11 discussed yet. I just got this stuff yesterday.  
 12 (Exhibit 174 marked for identification.)  
 13 Q. (By Mr. Gilmore) I just handed you what's  
 14 marked as Defense Exhibit 174, which is your  
 15 June 29, 2009 Report of Findings in the Carriage  
 16 House case.  
 17 A. Yes, sir.  
 18 Q. Do you recognize it?  
 19 A. Yes, sir.  
 20 Q. And to date, this is the only report that  
 21 you've prepared for this case, correct?  
 22 A. Yes, sir.  
 23 Q. All right. As we sit here today, are you  
 24 aware of any changes or errors that you believe need  
 25 to be made or fixed in this report?

Page 87

1 A. Well, there's a lot of comments made about  
 2 this report, and this engineer's report, and,  
 3 certainly, anybody worth their weight in salt is  
 4 going to take what another man has to say to heart  
 5 and see if any of it has any merit. I just got it  
 6 yesterday afternoon late. I really haven't had a  
 7 chance to finish reading it yet.  
 8 Q. Beyond anything that you might need to  
 9 react to that was stated in other experts' reports,  
 10 are you aware of any other items that you would want  
 11 to change or correct in your report?  
 12 A. No.  
 13 Q. You intended to be thorough and accurate  
 14 in preparing this report and stating your  
 15 conclusions, right?  
 16 A. Thorough and accurate? When you come in  
 17 behind somebody else on a claim, whether it's a slab  
 18 case where there's nothing to look at, or a case  
 19 where everything has been fixed, it's far less than  
 20 a perfect world you're operating in. You are having  
 21 to gather evidence wherever you can find it and draw  
 22 conclusions from that evidence, having something  
 23 else than a perfect set of photographs or videos to  
 24 work from. This is not an exact science. The term  
 25 thorough is a relative term in this industry. You

Page 88

1 gather what you can get your hands on and do the  
 2 best you can to put a thorough picture together, so  
 3 that word thorough is a relative term here and  
 4 that's all I'm trying to say.  
 5 Q. Well, let's -- let's talk about some of  
 6 those limitations. You just stated one limitation  
 7 in your report was that you did not have an  
 8 opportunity to make a first hand inspection of the  
 9 property before it was repaired, correct?  
 10 A. Correct.  
 11 Q. Are there other limitations on the scope  
 12 of your report that would limit its thoroughness in  
 13 any way similar to that that you've mentioned?  
 14 A. Yes, sir.  
 15 Q. Could you name those other limitations on  
 16 your report?  
 17 A. As an appraiser, I will just use -- the  
 18 best way to answer your question is to use an  
 19 analogy of one of my other Nationwide claims.  
 20 Nationwide hired a local gentleman here by the name  
 21 of Joe LaFranco, who owns Quest Forensic Services.  
 22 He's a licensed engineer and a licensed general  
 23 contractor. He's 10 years older than I am. We  
 24 wanted to see everything that both sides had to  
 25 offer. In the production of this report, I only had

Page 89

1 what one side had to offer plus the engineering  
 2 report -- not engineering report, excuse me, the  
 3 estimate provided by Nationwide. If I had any  
 4 knowledge that National Forensic Group had produced  
 5 a report on this property, I would have wanted it.  
 6 Joe and I aggressively sought every stitch of  
 7 information that was available from both sides, and  
 8 we gave it to each other so we had a full picture of  
 9 what both sides had to say about the claim, and from  
 10 that, we developed a balanced opinion on what the  
 11 loss was. Without everything Nationwide has to  
 12 offer, I was operating half blind.  
 13 Q. Did you ever ask Sunquest if they had  
 14 received any kind of engineering reports on the  
 15 Carriage House property from Nationwide?  
 16 A. Sunquest indicated to me that they had no  
 17 knowledge of engineering reports produced for  
 18 Nationwide on this case.  
 19 Q. And as we sit here, you've never even seen  
 20 the NFC reports?  
 21 A. That is correct.  
 22 Q. The first time you learned of them, I  
 23 think you said was when you read about them in  
 24 Mr. Skee's engineering report, which you looked at  
 25 yesterday?

23 (Pages 86 to 89)

Lewis Edward O'leary, Jr. 10/6/2009

Page 90

1 A. That is correct. See, those reports were  
2 contained in this other case that Joe LaFranco and I  
3 were involved in. In fact, there were three  
4 different versions. It appears that somebody was  
5 telling the guy that ain't right, that ain't right,  
6 I will accept that. That was helpful to us to have  
7 those reports.

8 Q. Does this report state the opinions that  
9 you intend to testify about in the trial of this  
10 case?

11 A. I really, really want to have everything  
12 that both sides has to offer. A good forensic  
13 engineer will aggressively seek out all of the  
14 information that's available on both sides. The  
15 reason I pursued people that don't work for Ralph,  
16 don't have a dog in the hunt is I felt those people  
17 would be the most likely to provide me a balanced  
18 picture short of having what Nationwide has to  
19 offer.

20 Q. My question was a little different.  
21 Understanding that you might receive additional  
22 information that might cause you to change opinions  
23 or reach an additional opinion, but with the  
24 knowledge that you have as we sit here today, does  
25 this report state the opinions that you would intend

Page 91

1 to testify about at trial?

2 A. Yes, sir.

3 Q. And there are no opinions that you intend  
4 to testify about at trial that you know of as we sit  
5 here today beyond what you've set forth in this  
6 report?

7 A. There's no fresh thoughts or formulas  
8 floating around out there. Obviously, if we get off  
9 into why windows leak, we may dance around with that  
10 for hours. You know, there's all kind of material  
11 out there on that. Was I expected to have all that  
12 scientific material to back up that opinion here  
13 with me today?

14 Q. Well, I will ask you about scientific  
15 material that you've relied upon beyond what is  
16 cited in the report. You cite several textbooks or  
17 treatises. Are there other engineering or appraisal  
18 authorities that you have relied on in preparing  
19 this report not identified anywhere in the text  
20 here?

21 A. I don't remember whether I addressed it in  
22 that report or not, but this builder that bought  
23 this property owns Madison Homes. He's a  
24 homebuilder, and he was developing a subdivision  
25 called Shell Landing right there in Gautier, and

Page 92

1 I've got pictures and video of leaf and other  
2 organic material that blew past a brand new window  
3 in a model home that didn't have carpet down yet all  
4 the way across the room, stuck to the wall, the  
5 switch plates and everything, to show the kind of  
6 force that this wind can create on a window that's  
7 not designed to handle that much force, and these  
8 were significantly stronger windows than the ones at  
9 the apartments, and we're talking about in the same  
10 town during the same hurricane. I believe I  
11 mentioned that in the report, but if I didn't,  
12 that's certainly something that -- that I will be  
13 expounding upon when we get that far. Did I mention  
14 it in here?

15 Q. Well, you referenced videotapes of wind  
16 showing wind blown debris at properties -- other  
17 properties outside of Carriage House.

18 A. Yes, sir.

19 Q. And that's something that you -- you  
20 relied on --

21 A. Yes, sir.

22 Q. -- in reaching your opinions?

23 A. Yes, sir. I -- I lived through Camille,  
24 and I watched windows spray at me like a garden hose  
25 as that storm blew past in Memorial Hospital in

Page 93

1 Gulfport in 1969.

2 Q. Are there other -- beyond this videotape,  
3 are there other kinds of information that you  
4 haven't identified in your report that you relied on  
5 in reaching your opinions?

6 A. I don't remember what all reference  
7 material I talked in here about spraying windows,  
8 but as you've mentioned, I'm five months from trial  
9 in terms for preparing for -- for talking about all  
10 of these things. If I've got a document that I'm  
11 going to use -- the video on this other property in  
12 this subdivision not far from this one, certainly, I  
13 would want to give you a copy of it. I'm not going  
14 to try to hold anything back.

15 Q. And I would ask if that is something that  
16 you've relied on in reaching your opinions and can  
17 even envision using as an exhibit to illustrate your  
18 testimony at trial that I would ask that you produce  
19 a copy of that in response to our subpoena.

20 A. Would you make a note of the window spray  
21 theory? I have a separate file set up just for  
22 window spray. It's such a big deal in the industry  
23 that I've got an entire file on just that.

24 MR. GILMORE: And on that note, we need to  
25 go off the record.

24 (Pages 90 to 93)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 94</p> <p>1 MR. BROWN: Uh-huh (affirmative response).  2 VIDEOGRAPHER: Off the record at 11:26.  3 (Off the record.)  4 VIDEOGRAPHER: On the record at 12:45.  5 Q. (By Mr. Gilmore) Afternoon, Mr. O'Leary.  6 A. Afternoon, sir.  7 Q. We were looking at what's marked as  8 Defense Exhibit 174 before we broke for lunch.  9 A. Yes, sir.  10 Q. And that's your report in this case, the  11 Carriage House property case?  12 A. Yes, sir.  13 Q. On the first page of your report under the  14 heading "Background," you write in the third  15 sentence, "The available evidence suggests that all  16 of the buildings received some amount of flooding  17 ranging from less than a foot up to about 30  18 inches." Did I read that correctly?  19 A. Yes, sir.  20 Q. You refer to available evidence there.  21 Can you tell me what the available evidence is that  22 you were referring to?  23 A. Beyond the -- what I've described here as  24 interviews with witnesses and gathering of materials  25 from other experts in the industry, the photographs</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Have you made any effort to quantify on an  2 item-by-item basis the damage caused by storm surge  3 flooding at the Carriage House property?  4 A. Yes, sir.  5 Q. And have you memorialized that effort to  6 quantify the storm surge damage on an item-by-item  7 basis?  8 A. Yes, sir.  9 Q. What have you -- where have you reduced  10 that itemization?  11 A. Now, you said -- I'm sorry. You said the  12 storm surge, you didn't say the -- I think I  13 misunderstood what you -- you're talking about.  14 You're asking me is there a damage estimate that I  15 have produced, a formal damage estimate that shows  16 what I believe is the damages done by the flooding?  17 Q. That's correct, that is my question.  18 A. I -- I stand corrected. No, sir, I have  19 not produced a formal document.  20 Q. Do you intend to produce such a document?  21 A. If I did, it appears as though I would be  22 in violation of the court order in terms of how we  23 are to conduct ourselves in this appraisal.  24 MR. BROWN: And now we're getting off  25 into -- you probably didn't intend to go there, but</p>
<p style="text-align: right;">Page 95</p> <p>1 that were provided by the insured and the past  2 employees and Tammie Crossley.  3 Q. And I will refer down to the bottom of  4 that page and going over to the top of the next  5 page, you have under "Discussion" a list of sources  6 of information. Is that collectively what you  7 consider as the available evidence?  8 A. Yes, sir.  9 Q. Anything not listed under the heading  10 "Discussion" at the bottom of page 1 and top of page  11 2?  12 A. Well, the one glaring thing that's not on  13 this list is the stuff that I'm now being provided  14 with that I consider critical in having a balanced  15 view on a case.  16 Q. On the top of page 1, you say, "All  17 buildings received some amount of flooding." You  18 agree that each of these 17 units of the Carriage  19 House property was inundated by some sort of  20 flooding during Hurricane Katrina?  21 A. Yes, sir.  22 Q. And that this -- the flooding from storm  23 surge during Hurricane Katrina, that caused some  24 level of damage in each of those 17 buildings?  25 A. Yes, sir.</p>	<p style="text-align: right;">Page 97</p> <p>1 we're not doing discovery on the appraisal process  2 so...  3 Q. (By Mr. Gilmore) Yeah, I guess my --  4 well, I guess my question is are you going to be  5 putting -- not asking you to get into the appraisal  6 process, but are you going to be preparing some --  7 another estimate and report that either has both  8 wind and water damages in it or just a standalone  9 report that has water damage estimates that you  10 intend to introduce as an expert report in this  11 case?  12 A. I believe I will be required as part of my  13 testifying, should I ever reach the point that I am  14 testifying in a trial, on what portion of the  15 damages out there were flood damages. I have not  16 produced that yet.  17 Q. So as we sit here today, you haven't done  18 an item-by-item estimate of flood damage cost of  19 repairs --  20 A. Correct.  21 Q. -- for the Carriage House property?  22 A. Correct.  23 Q. The next sentence still working on page 1  24 of your report under the "Background" heading, the  25 next sentence reads, "Many of the buildings also</p>

25 (Pages 94 to 97)

Lewis Edward O'leary, Jr. 10/6/2009

Page 98

1 received major damage to their roofs and several  
 2 lost all or part of an end wall." Did I read that  
 3 correctly?  
 4 A. Yes, sir.  
 5 Q. How many of the 17 buildings at the  
 6 Carriage House property received major damage to  
 7 their roofs?  
 8 A. All of them had major damage to their  
 9 roofs.  
 10 Q. Sir, in your opinion --  
 11 A. What you're asking me.  
 12 Q. That -- that is my question. So a  
 13 slightly more accurate sentence there would read all  
 14 of the buildings --  
 15 A. Yes.  
 16 Q. -- also received major damage to their  
 17 roofs. Is it your opinion that there was wind  
 18 driven rain intrusion to the interior of each  
 19 building at the Carriage House property?  
 20 A. The term wind driven rain is a hotly  
 21 contested term in the insurance industry. I believe  
 22 I understand what you're asking me with regard to  
 23 what is the definition of wind driven rain.  
 24 Q. And we did discuss this before with the  
 25 understanding of what that term is as essentially

Page 99

1 water or rain that has been allowed to enter a  
 2 building because of wind damage; is that fair?  
 3 A. Yes, sir.  
 4 Q. And is it your opinion that such damage  
 5 occurred in each of the 17 buildings at the Carriage  
 6 House property?  
 7 A. Yes.  
 8 Q. Under the next heading "Foreward," you  
 9 write, "At the request of the insured, I was  
 10 enlisted to examine all available evidence and  
 11 create an estimate that most accurately identifies  
 12 the cost of all repairs caused by or the result of  
 13 wind force created by Katrina." Did I read that  
 14 correctly?  
 15 A. Yes.  
 16 Q. You italicized request. Is there a  
 17 particular reason why?  
 18 A. Ask that question one more time, please.  
 19 Q. Sure. In that first sentence there in  
 20 your report, request is italicized, at the request  
 21 of the insured. I was just wondering if there's a  
 22 particular reason why you've italicized that word.  
 23 Is that of some significance?  
 24 A. I'm reasonably sure that it was at the  
 25 time I did that. It doesn't come to mind now why I

Page 100

1 did that now.  
 2 Q. And you say, "I was enlisted to examine  
 3 all available evidence and create an estimate that  
 4 most accurately identifies the cost of all repairs  
 5 caused by or the result of wind force created by  
 6 Katrina." That was the assignment for which  
 7 Sunquest had retained you, correct?  
 8 A. Yes, sir.  
 9 Q. And that is an assignment that's narrower  
 10 in scope than your role as an appraiser? We're  
 11 getting into what that role would be, but this  
 12 sentence here has to do with your role as a forensic  
 13 consultant, correct?  
 14 A. Yes, sir.  
 15 Q. You next write, "To first segregate the  
 16 scope of wind damages from those related to flooding  
 17 and then create a corresponding estimate for the  
 18 value for each different line item." Did I read  
 19 that correctly?  
 20 A. Yes, sir.  
 21 Q. And is that what you had done with this  
 22 assignment, you have attempted to segregate wind  
 23 damages from flooding?  
 24 A. And then create an estimate that dealt  
 25 with what's left over, the wind portion.

Page 101

1 Q. Can you describe each step that you took  
 2 in order to segregate wind damage from flooding  
 3 damage?  
 4 A. This is a pretty big project. It would be  
 5 impossible to articulate that in anything under 1000  
 6 words. Can you be more specific like the roof or a  
 7 particular wall or --  
 8 Q. Well, I guess without -- we'll look at  
 9 specific portions of specific buildings, but  
 10 generally speaking, how did you segregate damage  
 11 caused by flooding versus damage that is caused by  
 12 wind?  
 13 A. As a rule, the nature of the damage  
 14 created by flood is different than the nature of the  
 15 damage created by wind.  
 16 Q. Can you explain that?  
 17 A. Well, to begin with, if a building remains  
 18 essentially intact structurally, the damage created  
 19 by flooding is normally limited to something below  
 20 the water line. You would not expect flooding  
 21 damage in a building that remained intact largely.  
 22 Anything above the water line could be flood.  
 23 Q. Do you believe there was any structural  
 24 damage caused by flooding at any of the buildings of  
 25 the Carriage House property?

26 (Pages 98 to 101)

Lewis Edward O'leary, Jr. 10/6/2009

Page 102

1 A. I have not seen evidence that suggests  
2 there's any structural damage caused by flooding.  
3 Q. Did you make an effort to look for any  
4 such evidence?  
5 A. Yes, sir.  
6 Q. That would have been looking at  
7 photographs?  
8 A. Well, keep in mind that's all -- that and  
9 testimony is all that's really available once you go  
10 out to a property that's been completely repaired.  
11 Q. Besides -- besides looking at photographs  
12 and, I guess, talking with witnesses, is there any  
13 other effort you've made to determine whether there  
14 was structural damage to flooding -- caused by  
15 flooding?  
16 A. You can examine a property that remained  
17 largely intact. You can find crack lines, for  
18 example. A crack line that's a stair step crack  
19 line could be an indicator of a settlement issue  
20 that had nothing to do with flood or wind. So based  
21 upon the portion of the property that was not really  
22 affected by the restoration effort, you could find  
23 evidence of previous repairs and/or previous damage  
24 that was not repaired. I just gave you an example  
25 of such a stair step type of effect, and this --

Page 103

1 this property doesn't have brick work. Compass  
2 Point does, but if I found evidence of stair step  
3 right up the mortar from a corner, I would believe  
4 that was probably a settlement issue that predated  
5 the storm.  
6 Q. I think I understand what you said earlier  
7 was that the first step in segregating flood damage  
8 from wind damage was determining the water line.  
9 A. Yes, sir.  
10 Q. After you determine how high the flooding  
11 had risen on the property, what were -- what would  
12 be the next step or what was the next step that you  
13 took in segregating flood from wind damage?  
14 A. What photographs and witnesses are  
15 available, you attempt to get into the minutiae of  
16 what the damages were in that specific area. If you  
17 have, for example, a window that largely was above  
18 the water line, we'll say a window starts at 18  
19 inches off the ground -- off the -- the floor,  
20 finished floor is what I meant to say, not the  
21 ground, and the flood line was 24 inches, which  
22 means the flood line was up six inches into the  
23 window, and you have evidence of severe mold above  
24 that significantly higher so that you can't blame it  
25 on the wicking from the water rising up in a

Page 104

1 capillary action to the Sheetrock, that water  
2 entered that space via another method other than  
3 flooding. It could have entered it by what's called  
4 a wind induced seal failure around the window that  
5 wasn't designed to handle that kind of stress.  
6 It could have come in through the roof  
7 that -- that's in the process of failing. You go  
8 upstairs, or via the photographs, you go upstairs  
9 metaphorically, and you find that this apartment had  
10 a collapsed ceiling from the amount of water that  
11 had entered it. You now have a likely source that  
12 the water came down via a wind source.  
13 Q. So in your opinion then, based on drawing  
14 a water line and accounting for any wicking of water  
15 from flooding up into the walls, anything -- any  
16 damage beyond that area would be attributable to  
17 wind; is that fair to say?  
18 A. Yes, sir. Wind is not the only reason,  
19 but wind would be the most likely reason.  
20 Q. The -- the flooding -- the area that was  
21 inundated by flooding, that would show damage from  
22 that flooding in photographs, correct?  
23 A. Yes, sir, where there are photographs.  
24 Q. And in the areas inundated by flooding,  
25 the after the storm visual evidence would not show

Page 105

1 any independent damage that wasn't caused by  
2 flooding, correct?  
3 A. You're going to have to ask that question  
4 again.  
5 Q. That was a bad question. I -- I'll --  
6 when the flood waters rose and caused damage, that  
7 left obvious evidence, visual evidence afterwards?  
8 A. Yes, sir.  
9 Q. That obvious visual evidence would have  
10 masked any other damage that might have occurred in  
11 the area inundated by flooding; is that fair to say?  
12 A. I'm going to try to answer your question  
13 in a particular way. If I don't answer it, tell me  
14 so. These windows prior to the storm surge arriving  
15 were exposed to force roughly four times or better  
16 the force these windows and exterior doors were  
17 capable of handling, forces significantly higher  
18 than what the roof was capable of handling, which  
19 suggests to me, based upon my experience and the  
20 physical evidence, that water was getting into this  
21 building before the storm surge got there.  
22 Q. My question was a little different. My  
23 question was this: If you look at a photograph  
24 after the storm --  
25 A. Yes, sir.

27 (Pages 102 to 105)

Lewis Edward O'leary, Jr. 10/6/2009

Page 106

1 Q. -- from that photograph, you wouldn't be  
2 able to identify any damage beyond flooding damage  
3 to the areas inundated by storm surge; is that fair  
4 to say?

5 A. Sometimes. If I have a mustache around a  
6 window where the water was blowing in around this  
7 window because of a wind induced seal failure, and  
8 I've got a flood line, remember the example I used  
9 where it's six inches up into the bottom of the  
10 window, the physical evidence above that tells me  
11 this thing was leaking big time before the surge got  
12 there. Is the evidence masked below the water line,  
13 yes. Is there evidence to suggest there was already  
14 physical damage there before the surge got there,  
15 yes.

16 Q. So just so I'm clear and the jury is  
17 clear, looking at a photograph alone of an area that  
18 had been inundated by a storm surge in the area  
19 below that water line, it's impossible to identify  
20 damage that was not caused by the flood; is that  
21 fair to say?

22 A. Impossible is too strong a word. The --  
23 if you have physical evidence to work with that I've  
24 just described, this is all about the likelihood of  
25 what happened. That's what forensics is about,

Page 107

1 trying to put a picture back together again. It's  
2 not an exact science. It's impossible to tell  
3 exactly how bad the damages was below the water  
4 line. That I will agree with you, but whether or  
5 not there was damages there below the water line  
6 before the water got there, no, sir, it's not  
7 impossible.

8 Q. All right. I will try and ask my question  
9 a little bit more precisely. Again, I'm just  
10 talking about visual evidence that you can see in a  
11 photograph.

12 A. Yes, sir.

13 Q. And I'm just trying to find out, can you  
14 look at a photograph that shows an area that had  
15 been inundated by a storm surge and identify a --  
16 some feature within that area below the water line  
17 that would not have been damaged by the storm surge  
18 just from that photograph alone? Can you do that?

19 A. I cannot quantify the damages below the  
20 water line that were the result of wind via the  
21 photographs I've been working with.

22 Q. Are there any estimates or descriptions of  
23 damage in your report that are not caused solely by  
24 wind?

25 A. I believe some of the damages out there

Page 108

1 were caused by the wind and by the flooding. Does  
2 that answer your question?

3 Q. Have you made any effort to quantify how  
4 much of the damages that you describe in your report  
5 were caused by both wind and flood acting together  
6 or in some sequence?

7 A. Up to now, the report I have produced was  
8 geared toward a classic appraisal, and that is if  
9 the damages were already in place, there's nothing  
10 beyond ruined. If carpet, for example -- if I  
11 believe that this apartment, ground floor, was  
12 already saturated, the carpet was ruined before the  
13 flooding got there, you can't take something past  
14 ruined. It's -- there's no ruiner or ruinst, it's  
15 ruined. We've been allowed to make those type of  
16 interpretations in many classic appraisals operated  
17 under the classic guidelines for appraisers.

18 Q. Well, I want to focus on your role and  
19 your opinions as a forensic consultant that has been  
20 retained by Sunquest --

21 A. Yes, sir.

22 Q. -- on causation. And are there any  
23 descriptions of damage in this report, Defense  
24 Exhibit 174, that was caused both by winds and by  
25 flood?

Page 109

1 A. I'd have to go back and examine the  
2 estimate to answer that accurately. I believe I've  
3 attempted on that report -- this report and the  
4 supporting estimate to create what I believe was  
5 caused by or the result of wind, and I think I laid  
6 that out as the preface for why -- what I was doing  
7 trying to articulate what was caused by or the  
8 result of wind.

9 Q. And in attempting to do that, have you  
10 specifically excluded any damage that would have  
11 been caused by wind and flood together?

12 A. I don't -- I'm not sure at this moment  
13 whether any specific line items were a concurrent  
14 causation or not. That's a real fine line we're  
15 talking about here. Is it possible that some of my  
16 estimate could easily be argued as a concurrent  
17 causation, yes.

18 Q. Do you have any rough estimate of how much  
19 of your estimate could be argued easily as a  
20 concurrent causation?

21 A. I'm not even sure about the width and  
22 breadth and the scope of this moment so much -- much  
23 less the dollar value of it. My apologies.

24 Q. I'm still working on page 1 of your  
25 report, Defense Exhibit 174.

28 (Pages 106 to 109)

Lewis Edward O'leary, Jr. 10/6/2009

Page 110

1 A. Yes, sir.

2 Q. And at the last paragraph under the

3 "Foreward" section, you say, "My credentials exceed

4 that of virtually all adjusters that would have

5 otherwise been assigned for this task. See tab

6 number 3, resume." Did I read that correctly?

7 A. Yes, sir.

8 Q. And we've already gone through your resume

9 and credentials. Your assertion that your

10 credentials exceed that of virtually all adjusters

11 that would have otherwise been assigned for this

12 task, it's fair to say that's just an assumption,

13 right, Mr. O'Leary?

14 A. That is my opinion, that is correct.

15 Q. Do you even know who the Nationwide

16 adjusters assigned to this claim were?

17 A. Their names are on the estimates, but have

18 I interviewed them, no. Would I like to interview

19 them, yes.

20 Q. You don't -- do you know how much --

21 sitting here today, you don't know how much training

22 or experience any of the adjusters have, correct?

23 A. I have to use their work product to

24 suggest to me their level of expertise given lack of

25 anything else. When a -- when a gentleman presents,

Page 111

1 for example, carpet prices of 73 cents a square foot

2 and the standard number in Xactimate at that

3 particular point in time for Mississippi, Gulfport

4 cost code is two-and-a-half times that, it suggests

5 to me that he doesn't have as good a feel for what

6 costs should be as he should just to give you an

7 example.

8 Q. The answer to my question is at this

9 point, sitting here today, you have not made any

10 investigation of the background and credentials of

11 the Nationwide adjusters who adjusted this, right?

12 A. Beyond what I've just said, no, sir, I've

13 made no attempt.

14 Q. Now, you learned just yesterday that

15 engineers from National Forensic Consultants have

16 been retained and prepared forensic engineering

17 reports for Nationwide in the course of adjusting

18 the claim, correct?

19 A. Yes, sir.

20 Q. Do you know -- are you familiar with NFC?

21 A. Yes, sir.

22 Q. Have you made any effort to identify who

23 the engineers were from NFC who inspected the

24 Carriage House property?

25 A. When I get my hands on the reports, I'm

Page 112

1 sure it will show who they were.

2 Q. Your next sentence reads, "Accordingly, I

3 was selected to go through all available records and

4 secure testimony to create the following estimate of

5 cost for the damages caused by or the result of wind

6 force. The following are, perhaps, my opinions on

7 what portion of the damages should have been written

8 up as wind and why." Did I read that correctly?

9 A. Yes, sir.

10 Q. Now, when you say you secure testimony,

11 what did you mean by that phrase, you were asked to

12 secure test -- or selected to secure testimony?

13 A. I was selected to do an analysis. How I

14 did my analysis was part of the reason that I was

15 selected. Because I am so fiercely independent, I'm

16 going after anybody I can find that has no dog in

17 the hunt to see what their opinions were on what the

18 damages were as opposed to relying heavily on the

19 people that are tied to Mr. Brockman.

20 Q. So when you used the phrase secure

21 testimony, you meant you went out and consulted with

22 other individuals for their information or opinions

23 as to your effort to estimate wind damages to the

24 Carriage House property; is that correct?

25 A. Yes, sir.

Page 113

1 Q. Those are the individuals that you've

2 identified in this report, correct?

3 A. Yes, sir.

4 Q. And when you use the phrase testimony, is

5 it your understanding that any of these individuals

6 are going to testify at trial in support of your

7 analysis?

8 A. Whether they support or refute my analysis

9 will -- is yet to be determined. I've identified

10 the people I went to to get information. What they

11 say on a witness stand is yet to be determined.

12 Whether they support me or say no, that ain't what I

13 told him, I don't know. These are not my experts.

14 These are people that were in place at the time.

15 They are fact witnesses.

16 Q. And the next heading on -- still on page 1

17 of your report, Defense Exhibit 174, entitled

18 "Discussion," you write in the first sentence,

19 "Because of the visual evidence of the damage

20 appears to have been repaired prior to my

21 inspections, I approached this estimate in like

22 manner to estimating a Katrina slab case whereby the

23 physical evidence at the loss location that would

24 normally be available is either only partially

25 available or not at all." Did I read all of that

29 (Pages 110 to 113)

Lewis Edward O'leary, Jr. 10/6/2009

Page 114

1 correctly?  
 2 A. Yes, sir.  
 3 Q. And I think you testified before, the  
 4 first time you visited the property in March of  
 5 2007, the repairs had already been completed,  
 6 correct?  
 7 A. Yes, sir.  
 8 Q. What contracting company had performed the  
 9 repairs on the Carriage House?  
 10 A. Greg Stewart's company, which I believe he  
 11 operates as Madison Homes. They have -- he's part  
 12 of a group partnership, and they had different names  
 13 for their partnerships, so in terms of which  
 14 specific name he was doing these repairs under, I  
 15 believe it was his primary company name, which is  
 16 Madison Homes, but have I verified that that's the  
 17 name he did it under, no, sir, I have not.  
 18 Q. The -- the -- I guess Mr. Stork and his  
 19 company, are they affiliated with the buyers of the  
 20 Carriage House property?  
 21 A. Stork, who is Stork?  
 22 Q. I'm sorry, perhaps I misheard you. I  
 23 thought you had said Greg Stewart. Is --  
 24 A. Stewart, Greg Stewart. Greg Stewart is  
 25 part of a -- and I don't know how many people are

Page 115

1 part of the -- you know, if you're involved as a  
 2 developer, you have different partners and different  
 3 deals. I believe the three partners involved in  
 4 buying these two properties, referring also to  
 5 Compass Point, was Greg Stewart, David Pilger and  
 6 Greg Freeland. Greg Freeland is an attorney,  
 7 David Pilger is an attorney and David [sic] Stewart  
 8 is a contractor/developer.  
 9 Q. So it's fair to say it's your  
 10 understanding that the partnership that bought  
 11 Carriage House and Compass Point from Sunquest  
 12 itself repaired and renovated the property; is that  
 13 fair to say?  
 14 A. Internally -- I mean, at times, you have  
 15 one company name here that's arm's length from  
 16 another, but internally, this group did their own  
 17 repairs, yes, sir.  
 18 Q. Was there a specific person that you --  
 19 involved in the repairs that you consulted when you  
 20 first began work on the Carriage House property?  
 21 A. I've had a lot of conversations with Greg  
 22 Stewart and several of his superintendents and  
 23 Tammie Crossley.  
 24 Q. Tammie Crossley is a public adjuster?  
 25 A. Yes, sir.

Page 116

1 Q. Was Ms. Crossley working with Greg Stewart  
 2 and David Pilger and their group that bought the  
 3 properties?  
 4 A. She already had an ongoing relationship  
 5 with Greg Stewart and his group when I was asked to  
 6 begin working with her on other matters on a  
 7 technical support basis. It was only after I had  
 8 worked with her to some degree at some point was I  
 9 introduced to one of her clients, which was Greg  
 10 Stewart and company.  
 11 Q. When you first began working with  
 12 Mr. Stewart and Ms. Crossley, did you ask for  
 13 records that detailed the repairs that were  
 14 performed on the property by the new buyers?  
 15 A. Understand, I didn't even know the new  
 16 buyer at this point, so I wasn't doing a forensic  
 17 examination of the property for anybody at first.  
 18 Q. Have you ever looked at the records of the  
 19 actual repairs performed on the Carriage House  
 20 property?  
 21 A. No, I have not.  
 22 Q. Have you asked to look at those records?  
 23 A. The accounting records, no, sir.  
 24 Q. Well, I'm not talking about the accounting  
 25 records. I'm -- just the accounting records. Any

Page 117

1 kind of records that would detail what repairs were  
 2 done and how much those repairs cost, have you  
 3 looked at any of those kinds of records?  
 4 A. I have not looked at their accounting  
 5 records for these two properties.  
 6 Q. And I'm not sure if we're using accounting  
 7 records in the same way. Accounting records to me  
 8 is something different than what I described. I'm  
 9 talking about re -- actual records of the repairs  
 10 made. Is that what you mean by accounting records?  
 11 A. Let me try to explain why I'm answering  
 12 you the question the way I am, and if this works,  
 13 great. If not, we'll try again. Greg Stewart was  
 14 involved in about 35 properties after Katrina. He  
 15 was bringing Sheetrock down from places like Jackson  
 16 and Birmingham by the truckload and distributing it  
 17 to the various properties after it got down here.  
 18 His accounting records, because these were  
 19 properties they were fast tracking to get back on  
 20 line quickly had massive overlap and were difficult  
 21 at best to follow. I know this because I got deeply  
 22 involved in his accounting record on other  
 23 properties and realized that it was difficult, if  
 24 not impossible, to truly separate what was for this  
 25 property versus what was for that property. Based

30 (Pages 114 to 117)

Lewis Edward O'leary, Jr. 10/6/2009

Page 118

1 on that inside knowledge on other properties, I did  
2 not attempt to do the same for this one.

3 Q. Have you ever asked Mr. Stewart or anyone  
4 who works for him to come up with an overall  
5 estimate of what it cost to repair the Carriage  
6 House property?

7 A. They have come up with accounting records  
8 for this project, I'm told, and that the total  
9 account -- accounting for the repairs they made to  
10 them was in the range of seven-and-a-half million  
11 dollars. That is the extent that I have knowledge  
12 with regard to what they spent to repair these two  
13 properties.

14 Q. And was that figure, that seven-and-a-half  
15 million figure, was that just told to you verbally?

16 A. Yes, sir. I have not seen the accounting  
17 records.

18 Q. You've seen other accounting records that  
19 Mr. Stewart and his company had for various  
20 properties including Carriage House?

21 A. Yes, sir.

22 Q. You just have never seen a set segregated  
23 just showing repairs and costs associated with those  
24 repairs for Carriage House; is that fair?

25 A. Yes, sir.

Page 119

1 Q. And it's your understanding from what  
2 Mr. Stewart and his company have told you that there  
3 is no such set of just those records for the repairs  
4 to Carriage House?

5 A. I -- I can't comment on whether such  
6 accounting exists. I have no knowledge on that.

7 Q. Just on a clear, did you ever ask  
8 Mr. Stewart is there such a set of the records  
9 showing the repairs just for the Carriage House  
10 property?

11 A. I have never asked him that question.  
12 Excuse me.

13 Q. Okay. Back to your report.

14 A. Page 1?

15 Q. Yeah, still on page 1 under "Discussion."

16 A. Yes, sir.

17 Q. And in that first sentence, you said, "I  
18 approached this estimate in like manner to  
19 estimating a Katrina slab case." Now, a slab case  
20 is where the property was completely destroyed down  
21 to the concrete slab hence the name, right?

22 A. Yes, sir.

23 Q. And in such cases, there's no structure  
24 that's left behind to inspect after the damages  
25 occurred, right?

Page 120

1 A. That's correct.

2 Q. That's different than what happened here,  
3 the Carriage House damage?

4 A. That is correct.

5 Q. The buildings were still standing after  
6 Hurricane Katrina had passed, right?

7 A. Yes, sir.

8 Q. And it would have been possible for  
9 someone to come in shortly after the storm and  
10 perform a visual inspection of what the actual  
11 extent of damage was to the standing buildings at  
12 the Sunquest Carriage House lookout, right?

13 A. It would have been possible, yes, sir.

14 Q. Well, you know, they could have taken  
15 photographs of that damage, correct?

16 A. Yes, sir.

17 Q. And prepared estimates based on those  
18 photographs and their own visual inspection of what  
19 they saw with their own eyeballs, right?

20 A. It is certainly possible, yes, sir.

21 Q. Well, in fact, that's not impossible,  
22 that's actually what happened in this case, right,  
23 Nationwide's adjusters came in after the storm and  
24 did a visual inspection and prepared estimates  
25 before the property had been repaired, correct?

Page 121

1 A. They pro -- provided an estimate of what  
2 they -- somebody asserted was the damages.

3 Q. And you said that you treated this as if  
4 it had been a slab case; is that fair to say?

5 A. Yes, sir.

6 Q. And I want to make sure I understand what  
7 you mean when you say that in your report. Do you  
8 mean to say that your estimates are designed to  
9 treat the property as if it was a total loss?

10 A. No, sir.

11 Q. Can you explain what you mean by saying  
12 that you treated it as if it were a Katrina slab  
13 case?

14 A. Sometimes you evaluate all of the physical  
15 evidences there for you to inspect and make point by  
16 point, line item by line item determination as to  
17 what is the wind damage portion of the damages.  
18 When you don't have the physical evidence still  
19 there to work with, you have to work outside the box  
20 so to speak, which is to gather whatever photographs  
21 might be out there, whatever other physical evidence  
22 and/or testimony is available, weather reports, tax  
23 records. You work largely outside of the routine  
24 box in trying to rebuild a picture. Adjusters do  
25 this all the time.

31 (Pages 118 to 121)

Lewis Edward O'leary, Jr. 10/6/2009

Page 122

1 Q. So when you're saying that you approached  
2 estimating damages for this property as if it were a  
3 slab case, what you mean simply is that because the  
4 property had already been repaired by the time you  
5 inspected it, it was as if you were looking at a  
6 slab case where there is no remaining physical  
7 evidence of what the damage had been?

8 A. Yes, sir.

9 Q. Now, under the "Discussion" heading still  
10 on the page of -- first page of your report moving  
11 over to the second page, you have a number of items.  
12 Number 1, you state, "I collected all available  
13 pictures, reports and estimates from all sources  
14 available." Did I read that correctly?

15 A. Yes, sir.

16 Q. Let's start with the pictures. You attach  
17 as tab 1 to your report a set of pictures that you  
18 were provided. Are those the pictures that you were  
19 referring to?

20 A. Yes, sir.

21 Q. Beyond those pictures under tab 1, did you  
22 have any other pictures of the damage to the  
23 property in preparing your report?

24 A. I believe the architect that went down  
25 from Monroe had a bunch of pictures attached to his

Page 123

1 reports. TBA, I think, was the name of the firm.

2 Q. And that's also attached as a tab to your  
3 report?

4 A. Yes, sir.

5 Q. Let me broaden my question just a bit.  
6 Other than the photographs that you attached one way  
7 or another to your report, are there any other  
8 photographs that you reviewed in the course of  
9 preparing the report that showed the damage to the  
10 Carriage House property?

11 A. I think I provided all of the photographs  
12 I have. I'm pretty sure I have.

13 Q. Number 2, you say, "I interviewed  
14 witnesses that could provide input as to the extent  
15 of the loss." Did I read that correctly?

16 A. Yes, sir.

17 Q. And then if you flip over to the top of  
18 page 2 of your report, you list individuals. You  
19 say, "The witnesses I managed to find and talk to  
20 thus far are as follows," and you have seven  
21 individuals listed there, correct?

22 A. Yes, sir.

23 Q. Other than those individuals that you have  
24 listed there, are there any other witnesses that you  
25 talked to and received information from that was

Page 124

1 relevant to your conclusions in your report?

2 A. I don't see Greg Stewart's group on this  
3 list. I apparently left him off the list.

4 Q. In addition to Greg Stewart, are there  
5 other individuals that work with Greg Stewart that  
6 you spoke with? Earlier you mentioned that you  
7 might have interviewed some of the superintendents.

8 A. Yes, sir, I've had multiple  
9 conversation -- I think he has three  
10 superintendents, but it may be four. There were two  
11 of them that were involved in this, and the two that  
12 were involved in this, I had conversations.

13 Q. And what were those individuals' names?

14 A. I'm going to have to go back to the  
15 records on that. I can't remember right now. I --  
16 I will happily give you their names, I just -- I --  
17 I don't know why I can't remember them right now.

18 Q. And when you say you have to go back to  
19 the records, it would be the -- your work file that  
20 you've copied and produced and given to --

21 A. Oh, there was correspondence that went  
22 back and forth on this case. I just -- I can't  
23 remember their names right now. I can certainly get  
24 them for you.

25 Q. Well, I would appreciate that, if you

Page 125

1 could, and any correspondence you had with those  
2 individuals to the extent it hasn't been produced, I  
3 would ask if you could --

4 A. Okay.

5 Q. -- produce that and give it to us or  
6 counsel so that they can produce it to us.

7 A. All right, sir.

8 Q. Beyond Greg Stewart and his two  
9 superintendents that you had mentioned, are there  
10 any other individuals that you spoke with that  
11 provided you information relevant to your opinions  
12 in your report here?

13 A. I'm trying to remember whether it was  
14 David Pilger or Greg Stewart himself that -- that  
15 got off into the supporting of Donna Bass'  
16 assertions about all of the vandalism. I think it  
17 was David Pilger.

18 Q. Mr. Pilger had first-hand knowledge of  
19 vandalism that had allegedly occurred at the  
20 property?

21 A. I didn't ask him whether or not he had  
22 heard it from his partner, Greg Stewart, or whether  
23 he physically walked around and saw the evidence or  
24 not. I did not ask him that. I was merely looking  
25 for someone to affirm what Donna was telling us, and

32 (Pages 122 to 125)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 126</p> <p>1 Donna was the on-site person that would have had 2 first-hand knowledge. 3 VIDEOGRAPHER: Two minutes. 4 MR. GILMORE: We can go off record and 5 change the tape. 6 VIDEOGRAPHER: Off the record at 1:33. 7 End of tape three. 8 (Off the record.) 9 VIDEOGRAPHER: Beginning tape four. On 10 the record at 1:37. 11 Q. (By Mr. Gilmore) All right. Still 12 working on page 1 at the bottom under "Discussion," 13 you have item number 3, "I examined the property for 14 evidence of relatively recent repairs." Did I read 15 that correctly? 16 A. Yes, sir. 17 Q. And what do you mean by that? You were 18 looking for what appears to be repairs attributable 19 to Katrina damage; is that correct? 20 A. Well, certain damages like Sheetrock 21 damage to a ceiling where there is a brand new 22 ceiling in this apartment would suggest that since 23 the roofs were all lost that was probably Katrina 24 damage for sure. 25 Q. When you walked around examining the</p>	<p style="text-align: right;">Page 128</p> <p>1 A. No. Prior to bringing the property 2 managers on board, he did the renovations so whoever 3 he put out there after he finished with his 4 renovations and started showing the property and 5 renting it out, these people would have been after 6 the fact people. 7 Q. Did you ever suggest either to the new 8 owners or to Sunquest that it would be helpful to 9 have someone accompany you to point out what 10 actually had been repaired at the Carriage House 11 property? 12 A. These things are under ideal conditions 13 the best way to do it. 14 Q. Is the answer no, you did not ask him? 15 A. There -- there was not one single person 16 that had complete knowledge of each unit. As I 17 mentioned earlier, Stewart had 35 properties he was 18 repairing, and he was utilizing his people to the 19 best he could, moving them around from property to 20 property, depending on what materials had just come 21 in because they were working as materials were being 22 received. No one person had the total picture on 23 this, so there was no one person that could give me 24 the guided tour. 25 Q. Item 4, you say, "I enlisted the</p>
<p style="text-align: right;">Page 127</p> <p>1 property for evidence of relatively recent repairs, 2 were you accompanied by anyone who worked for Greg 3 Stewart who had been involved in doing the repairs? 4 A. No, the property manager. They won't let 5 you go in -- in apartments where people's 6 furnishings are at by yourself. You've got to be 7 escorted. 8 Q. And the property manager, is that Donna 9 Bass? 10 A. No. She was the property manager at the 11 time of the storm. 12 Q. So when you did your inspection, you were 13 going with the property manager of the new owner? 14 A. Correct. 15 Q. What was his or her name? 16 A. I don't remember. It was academic anyway. 17 They were just baby-sitting me while I did my thing. 18 Q. Was it a man or a woman? 19 A. It was a woman. 20 Q. Did this -- you don't remember her name? 21 A. No. 22 Q. Did she have any idea of what had been 23 repaired -- 24 A. No. 25 Q. -- to the property?</p>	<p style="text-align: right;">Page 129</p> <p>1 assistance of those who could provide specialty 2 support on a variety of technical issues involving 3 relevant building codes (in 1974 and in 2005), 4 meteorology, engineering and standard pricing 5 guidelines for those locations." Did I read that 6 correctly? 7 A. Yes, sir. 8 Q. Now, if you turn to the back of your 9 report, page 6 under the "Credits" heading, you have 10 four individuals, and then you refer back to the 11 seven people on page 2 of your report. 12 A. Yes, sir. 13 Q. So those, I guess, 11 people in total, are 14 those the individuals you are referring to in item 4 15 on page 1 of your report? 16 A. There is one missing here and that would 17 be Todd -- Todd Skinner. Todd is an IA based in 18 Pensacola that teaches Xactimate, and he was my 19 source for getting back into what the 2005 prices 20 were in Xactimate. 21 Q. And then we had already mentioned Greg 22 Stewart himself and the two superintendents. 23 A. Yes, sir. Yes, sir. All of these names 24 should have been on my report. 25 Q. Now, the four people you have listed under</p>

33 (Pages 126 to 129)

Lewis Edward O'leary, Jr. 10/6/2009

Page 130

1 credits, those four people were not witnesses who  
 2 had direct factual information about the Carriage  
 3 House property, correct?  
 4 A. You mean what was damaged?  
 5 Q. That's right.  
 6 A. Yes, sir, that is correct.  
 7 Q. These were technical consultants of one  
 8 sort or another?  
 9 A. Yes, sir.  
 10 Q. The first one is Terry Moran, P.E.,  
 11 R.L.S., and he's with Moran-Machado or Machado  
 12 Engineering?  
 13 A. Yes, sir.  
 14 Q. How's that pronounced?  
 15 A. Your guess is as good as mine.  
 16 Q. Okay. What did you consult with Mr. Moran  
 17 about for your report on the Carriage House  
 18 property?  
 19 A. The windows -- the wind spray theory  
 20 around windows, seal -- wind induced seal failure,  
 21 the dynamics of water getting into an attic via  
 22 either violated seal strip shingles and/or soffit  
 23 louvers. It was a variety of technical issues in  
 24 putting a picture like this together. Those were  
 25 the two largest issues that come to mind right now.

Page 131

1 Q. Beyond those two issues, are there any  
 2 other matters reflected in your report that you  
 3 consulted on with Mr. Moran?  
 4 A. If I read through the report, there may  
 5 have been a couple of other minor points that we  
 6 went over together.  
 7 Q. The next person is Steve Harned, correct?  
 8 He's a meteorologist?  
 9 A. Yes, sir.  
 10 Q. And he's actually been designated as the  
 11 expert in this case --  
 12 A. Yes, sir.  
 13 Q. -- by Sunquest?  
 14 A. Yes, sir.  
 15 Q. Had you worked with Mr. Harned before you  
 16 started work on this case?  
 17 A. He was referred to me early on, in fact,  
 18 before Katrina. Bill Haggard, William Haggard, one  
 19 of the old men of the climatology industry based in  
 20 Asheville had referred me to Steve, I'm going to say  
 21 four or five, six years ago. Steve's the retired  
 22 technical adviser to the director for the National  
 23 Weather Service. Currently, he is the executive  
 24 director of the National Weather Association, and  
 25 just so happens to live a few miles from me.

Page 132

1 Q. And the meteorological opinions or --  
 2 well, meteorological opinions or information in your  
 3 report, is that attributable to Mr. Harned?  
 4 A. Yes, sir. I believe you have a copy of  
 5 his report.  
 6 Q. The third person is Neil Hall. What  
 7 matters did you discuss with Mr. Hall that are  
 8 reflected in your report?  
 9 A. Neil and I have worked on a number of  
 10 claims together. Neil has a -- an extensive  
 11 background in wind engineering.  
 12 Q. You worked on Katrina cases before the  
 13 Sunquest properties with Mr. Hall?  
 14 A. Uh-huh (affirmative response). Yes, sir.  
 15 Q. And what specifically did Mr. Hall  
 16 contribute that's reflected in your report here?  
 17 A. We -- I talked to both engineers about the  
 18 window spray theory, about the violated seal strips,  
 19 about the wind blowing in via minor racking openings  
 20 created by a building moving in the storm. I can't  
 21 tell you the nuts and bolts anymore of the specific  
 22 conversations, but I had basically the same  
 23 conversations with both of them.  
 24 Q. Any other matters that Mr. Hall provided  
 25 inputs on that are reflected in your report?

Page 133

1 A. He didn't provide any input on the  
 2 estimates, neither did Terry Moran.  
 3 Q. Did you provide them with copies of your  
 4 estimates?  
 5 A. No.  
 6 Q. So they just saw this report, this  
 7 six-page report?  
 8 A. Well, it was -- I believe I sent them the  
 9 attachments to go with the report, so if they wanted  
 10 to take the time to read them, I think I did copies  
 11 of the estimates. Understand this report is 9,000  
 12 pages including attachments.  
 13 Q. I understand.  
 14 MR. GAUDET: All too well.  
 15 A. I don't think they spent the time to study  
 16 them.  
 17 Q. (By Mr. Gilmore) Yeah, and I was really  
 18 trying to make a distinction between the report and  
 19 the tabs versus the estimates, and I think what you  
 20 were saying, just to make sure I'm clear, you asked  
 21 for Mr. Harned, Mr. Moran and Mr. Hall to weigh in  
 22 on the report and tabs not the building by building  
 23 estimates?  
 24 A. Correct.  
 25 Q. Now, the fourth person is Mr. Wiggins,

34 (Pages 130 to 133)

Lewis Edward O'leary, Jr. 10/6/2009

Page 134

1 Jerry Wiggins, and you have him listed as a  
2 consultant. What did Mr. Wiggins do or consult on  
3 that's reflected in your report or estimates?

4 A. Jerry actually produced these Xactimate  
5 estimates for me. Jerry is a specialist on sitting  
6 down and printing out line after line of Xactimate  
7 estimates.

8 Q. Can you describe the process that you and  
9 Mr. Wiggins had for preparing the estimates  
10 themselves?

11 A. We started with the Nationwide and the  
12 World Claim estimates. After a reasonably short  
13 period of time, it appeared as though the World  
14 Claim estimate had more credibility than the  
15 Nationwide estimate. We were looking for a starting  
16 point is where I'm going.

17 Q. When you -- when you say it appeared that  
18 the World Claim estimates had more credibility than  
19 the Nationwide estimates, can you explain why you  
20 thought that?

21 A. Well, when you leave a certain number of  
22 things out of an estimate or you underestimate by  
23 numbers that confound anyone that knew what you're  
24 supposed to be paying for things, an estimate will  
25 either survive or be brutalized in a scrutiny. Both

Page 135

1 estimates were put under scrutiny, and it appeared  
2 as though the World Claim estimate was closer to  
3 reality than Nationwide in our opinion.

4 Q. Okay. It sounds like when you looked at  
5 the Nationwide estimate and compared it to the World  
6 Claim estimate, you had two issues with the  
7 Nationwide estimates. One, some of the item pricing  
8 you thought was incorrect; is that fair to say?

9 A. Yes, sir.

10 Q. And then, two, you thought that specific  
11 items that needed to be repaired were omitted from  
12 the Nationwide estimate; is that correct?

13 A. Yes, sir.

14 Q. Beyond those two items, are there any  
15 other differences or concerns you had about the  
16 Nationwide estimates?

17 A. Well, that's all these estimates are is an  
18 endless string of little things. That's just that  
19 there's so many units that that endless string of  
20 little things add up to big numbers.

21 Q. So the next step, you and Mr. Wiggins took  
22 the World Claim estimates as a starting point?

23 A. Yes, sir.

24 Q. Did Mr. Wiggins essentially plug in the  
25 World Claim estimates into Xactimate; is that

Page 136

1 correct?

2 A. World Claims used Xactimate to produce  
3 their estimate, also, so it was fairly easy to -- to  
4 enter into the -- the system with the same database  
5 that they were operating from and expand on it.

6 Q. And that's -- your last point is what I  
7 want to ask about now. After you had input the  
8 World Claim estimates into Xactimate as a starting  
9 point, what was the next step that you and  
10 Mr. Wiggins took to prepare the estimates?

11 A. To begin the methodical room by room,  
12 apartment by apartment, building by building  
13 rebuilding of these estimates to fill in the blanks.

14 Q. And when you say there are blanks, what --  
15 how did you determine if a blank should be filled  
16 in?

17 A. You have photographs and you have  
18 witnesses to work with to try to rebuild the picture  
19 as best you can after the fact.

20 Q. Who is deciding how a blank was going to  
21 be filled in? Was that --

22 A. That was my job.

23 Q. And so you would make a decision that a  
24 certain item of damage that was not in an estimate  
25 already needed to be added?

Page 137

1 A. Yes, sir.

2 Q. You based that decision on looking at  
3 photographs?

4 A. And testimony.

5 Q. And the testimony --

6 A. And reviewing the property to see what  
7 appeared to be recent damages versus something that  
8 had no repairs done volatile which obviously means  
9 it wasn't part of anything. It was just something  
10 that was there undamaged. It still looks like the  
11 way it did four years before except now it has a  
12 fresh coat of paint on it.

13 Q. And then Mr. Wiggins, what was his role,  
14 simply to input the figure in the Xactimate system?

15 A. Yes, sir.

16 Q. Beyond inputting figures in the Xactimate  
17 system, did Mr. Wiggins have any other duties in  
18 preparing the Xactimate reports?

19 A. There were things that came up that  
20 neither of us knew exactly how to handle and Jerry  
21 was making phone calls also back to some of the same  
22 witnesses to try to get a feel for specific items.

23 Q. Who are the actual witnesses you relied on  
24 in preparing the Xactimate reports with Mr. Wiggins?

25 A. I think the names are in here with the

35 (Pages 134 to 137)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 138</p> <p>1 exception of the people that we've already talked 2 about that are not on the list. 3 Q. Well, maybe if you can just -- we'll go 4 through the list. On page 2 of your report, you 5 have listed Mr. Brandon, Timothy Brandon with TBA 6 Architecture, correct? 7 A. Yes, sir. 8 Q. And he provided the insured an independent 9 assessment of the loss. That's what you say in your 10 report, correct? 11 A. Yes, sir. 12 Q. You've attached that as tab 4? 13 A. Yes, sir. 14 Q. Is he one of the individuals that you and 15 Mr. Wiggins consulted in preparing these Xactimate 16 reports? 17 A. I believe we've talked to him about his 18 report, sir. 19 Q. Specifically in connection with trying to 20 complete the Xactimate reports? 21 A. Yes, sir. At times people will tell you, 22 man, I don't remember. That does happen. It 23 happens to me sometimes, too. 24 Q. Well, what would happen when people 25 couldn't remember whether a certain repair had been</p>	<p style="text-align: right;">Page 140</p> <p>1 based upon the input we could get. It was not a 2 perfect system, though. No matter how good these 3 people's memories were that we were working with, 4 their memories were not perfect. A certain amount 5 of this work is guess work, but it's best guess. 6 Q. Well, I want to understand what guesses 7 you made where there wasn't a photograph that showed 8 damage and where an individual couldn't remember 9 whether or not there had been damage that had 10 required repair, what would you and Mr. Wiggins then 11 do for that item in the Xactimate estimates? 12 A. Well, that's where you get off into 13 handling it like a slab case where you take all of 14 the evidence as a whole in each individual area of 15 the structure, and you come up with best guess. And 16 in this industry, best guess is a common technique 17 being used where the physical evidence is no longer 18 available. That is an accepted practice in this 19 industry of utilizing all of the evidence you can 20 get your hands on, and from there, taking a leap of 21 faith and making the best guess possible. 22 Q. Is it fair to say that there are estimates 23 for repairs of damage in your reports, your 24 Xactimate reports -- 25 A. Yes, sir.</p>
<p style="text-align: right;">Page 139</p> <p>1 done? 2 A. Well, if you've lost a ceiling upstairs, 3 and you've lost that roof, and the evidence is 4 pretty clear that you've lost that roof, you've lost 5 that ceiling and probably one beneath it. 6 Q. Is it fair to say that as a general rule 7 where you estimated that the ceilings on the second 8 story needed to be repaired, you concluded that that 9 would result in the ceilings on the first floor 10 having to be repaired as well? 11 A. Some of these buildings were more damaged 12 than others. Jerry and I did a little bit of an 13 analysis last night, and it appears as though we 14 allowed for a five to 10 percent Sheetrock 15 replacement in some of the buildings. We took 16 building 1 through 10 and did a crash effort. Okay. 17 How much of it did we really replace trying to come 18 up with a global picture here for this morning. 19 Some of the buildings, we had only five to 20 10 percent of the Sheetrock being replaced. Others, 21 we had 90, 95 percent, so there was no equivalent of 22 a cut and paste, as I described to you earlier, 23 going on with us. We legitimately attempted to 24 articulate every single unit, and it varied widely 25 in terms of how much repairs we had in each unit</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. -- that are based on neither photographs 2 or witness interviews, but your guess work as you 3 just described; is that fair to say? 4 A. There is no single section of this 5 estimate that is based purely on guess work. We 6 would -- individual items, remember I mentioned that 7 all this is is a series of a lot of little items, 8 and because there's so many units, it just adds up 9 to a big number. You can get stumped on whether or 10 not you need to replace the baseboard in this 11 particular bedroom or not, and you're just not sure, 12 and the evidence suggests that that's a new 13 baseboard in there. Remember these properties are 14 old properties built in the early '70s. If in our 15 inspection, it's got a new baseboard in it, the odds 16 are likely that baseboard was replaced during this 17 major renovation effort because I don't think these 18 properties have ever been flooded before. At least 19 I didn't see any evidence of it. 20 Q. Have you looked at photos exterior and 21 interior of the property before Hurricane Katrina? 22 A. Before Hurricane Katrina, I don't have 23 access other than Google Earth for photographs 24 before Katrina. I would hope in this appraisal 25 process, if y'all have got some pre-Katrina</p>

Lewis Edward O'leary, Jr. 10/6/2009

Page 142

1 photographs that y'all would provide it to us  
2 appraisers, it might be helpful. Anything we can  
3 get our hands on as appraisers, we really need to  
4 get our hands on to have a balanced review of this.

5 Q. Let me ask and try to be as precise as I  
6 can with my question. Are there any items of damage  
7 that you have estimated repair for where there are  
8 either no photographs, no witness testimony, and you  
9 couldn't tell from your own visual inspection after  
10 the repairs whether that item actually had been  
11 repaired?

12 A. I'm sure there are some areas where we did  
13 the best guess. I'm certain of it.

14 Q. Do you have -- can you give any kind of  
15 percentage estimate as to how many items you have  
16 repair entries for in your Xactimate reports that  
17 fall into the category we just discussed?

18 A. If I were to give you a guess at this  
19 point, I would say somewhere in the vicinity of  
20 10 percent of our estimate is purely the best guess.

21 Q. The individuals that you have -- you  
22 consulted that are for kind of specialty information  
23 or opinions that are listed on the last page of your  
24 report, do you know if any of these individuals do  
25 work for insurance companies?

Page 143

1 A. I know Dr. Neil Hall has worked for  
2 insurance companies. Clearly, he works the consumer  
3 side of the fence, also. Steve Harned works both  
4 sides of the fence, and Terry Moran before Katrina  
5 worked primarily the other -- the carrier side of  
6 the fence, and then both sides of the fence since  
7 Katrina. The only one that I don't know for sure  
8 whether he's ever worked the carrier side of the  
9 fence or not is Jerry Wiggins.

10 Q. It's fair to say Neil Hall has done all or  
11 substantially all of his Katrina related work on  
12 behalf of property owners, right?

13 A. I'm not in a position to address that.

14 Q. Do you know for Mr. Harned or Mr. Moran?

15 A. I know Steve Harned is working both sides  
16 of the fence. I know Mr. Moran is working both  
17 sides of the fence. Percentages --

18 Q. Specifically on -- I'm sorry.

19 A. -- I cannot -- I'm sorry.

20 Q. Specifically with respect to Katrina  
21 claims, do you know if they are working for  
22 insurers, Mr. Moran or Mr. Harned?

23 A. I only know what they've told me and that  
24 is that they're working both sides of the fence. To  
25 articulate beyond that, I couldn't do it. It would

Page 144

1 be just a wild guess.

2 Q. If these four specialty consultants had  
3 not contributed and discussed with you, what would  
4 be not present in your report?

5 A. Somebody else's name would be in their  
6 place.

7 Q. I think I -- that may be what I'm trying  
8 to actually ask, though, is how much of what's in  
9 your report now would not be there if these  
10 individuals or individuals with their specialty  
11 knowledge did not contribute and advise you?

12 A. I don't even begin to know how to answer  
13 that. I consulted with people that have specialty  
14 backgrounds on certain issues that I felt would be  
15 contentious to try to shore up that I'm not the only  
16 one thinking that way about certain items in this  
17 report. I turned to these people because these are  
18 people that I know of that have these specialties.

19 Q. Is there any specific analysis or opinion  
20 that you would not have been able to include in this  
21 report had you not gotten the inputs and consulting  
22 from these four individuals?

23 A. I don't know.

24 Q. Okay. If you turn to -- back to page 2 of  
25 your report, Defense Exhibit 174, and under

Page 145

1 "Findings," you say that, "Working from this  
2 estimate," it's World Claim's estimate, "as a  
3 starting point, I made scope, unit pricing and  
4 quantity corrections." Is that right?

5 A. Yes, sir.

6 Q. Those are the corrections that we  
7 discussed a few moments ago?

8 A. Yes, sir.

9 Q. Are there any sources of information from  
10 making those corrections beyond photos that you  
11 looked at and interviews you had with witnesses and  
12 your own inspection?

13 A. I believe that covers it.

14 Q. Were there any features in the Xactimate  
15 software itself that you selected or activated that  
16 caused any corrections of the sort that you identify  
17 here?

18 A. Keep in mind I did not produce the  
19 Xactimate estimate. I provided Jerry with the  
20 guidance on what I wanted in the estimate, and  
21 between him and Todd, these estimates are produced.  
22 I don't -- I don't like Xactimate. I believe these  
23 guys rely too heavily on it to guide them through  
24 how to put an estimate together, and it's not  
25 designed to tell you what you need to put in there.

37 (Pages 142 to 145)

Lewis Edward O'leary, Jr. 10/6/2009

Page 146

1 If you don't know what you're missing, you ain't  
2 going to get it in your estimate. Some of these  
3 people that produce these estimates rely on it to  
4 guide them, and it ain't going to do it. I do my  
5 own spreadsheet when I do my own estimates.

6 Q. Well, did you prepare as sort of an  
7 initial run your own spreadsheets of estimates for  
8 each building here?

9 A. I created a scope that I wanted the  
10 estimate built to which filled in the blanks of what  
11 was missing from the World Claim estimate. Jerry  
12 sat down and crunched the numbers. Jerry is very  
13 proficient in producing an Xactimate estimate, and  
14 with Todd's assistance, we were able to figure out  
15 what the standard Xactimate rates were at that time  
16 for the Mississippi Gulf Coast, 2005, fourth quarter  
17 and versus what was presented to us.

18 Q. How many conversations did you have with  
19 Mr. Wiggins about preparing these Xactimate reports?

20 A. At least 40 if not 60.

21 Q. Can you give an estimate of how many hours  
22 you believe Mr. Wiggins spent preparing the  
23 Xactimate estimates for the Carriage House property?

24 A. I certainly have the records on it. I  
25 think I paid him well over \$10,000 to produce these

Page 147

1 estimates.

2 Q. How was Mr. Wiggins compensated? Did you  
3 bill his time through to Sunquest?

4 A. No, no. He -- he worked for me. To give  
5 you an example, many adjusters, whether they're a  
6 public adjuster or an independent adjuster, have  
7 estimators that do estimates for them. They will  
8 provide the field data, and many times, these  
9 estimators will not even see the property. Because  
10 of the size and complexity of this loss, I had Jerry  
11 actively involved in going to the property and going  
12 through the minutiae to make sure we were getting it  
13 as right as we could. It wasn't the usual claim  
14 where you could go out and physically see, well,  
15 there's the damage, write it up. You know, there  
16 was a certain amount of hand holding involved here  
17 where you're trying to write something up that's not  
18 that way anymore.

19 Q. How much -- how many visits did  
20 Mr. Wiggins make to the Carriage House property?

21 A. I don't remember.

22 Q. Was it more than one?

23 A. Yes, sir.

24 Q. What would he do when you and he would go  
25 and visit these properties?

Page 148

1 A. Well, initially, we sat out what we wanted  
2 to do, and then you would run into minor issues, you  
3 know, did we -- did we need to include the baseboard  
4 in this room, what about the closet door, these sort  
5 of things, and it would require follow-up phone  
6 calls and/or visits. And keep in mind, Mr. Wiggins  
7 doesn't just work for me. There are attorneys on  
8 the Gulf Coast that hire Mr. Wiggins to produce  
9 estimates for them. Jerry is a certified home  
10 inspector. I believe he's a certified mold  
11 remediation contractor. He's got several  
12 credentials. I'm not his only client.

13 Q. Do you know, does Mr. Wiggins -- well, in  
14 Katrina, you're not -- strike that. How many  
15 Katrina-related cases, if you know, has Mr. Wiggins  
16 consulted on?

17 A. I do not know.

18 Q. Have you and he worked on other Katrina  
19 cases together besides the Sunquest cases?

20 A. Yes, sir.

21 Q. How many?

22 A. Four, five, six, and I work with -- I work  
23 with other estimators also. I think Jerry has done  
24 maybe a half a dozen with me, Katrina cases. Excuse  
25 me.

Page 149

1 Q. How about overall, how many cases have you  
2 and Mr. Wiggins worked together on?

3 A. Overall -- what does overall mean,  
4 Katrina?

5 Q. Including Katrina but beyond just Katrina.

6 A. The first project Jerry and I worked on  
7 together, I believe, was 1995.

8 Q. Can you give an estimate of just a  
9 ballpark figure of how many different claims have  
10 you and Mr. Wiggins worked on together since 1995?

11 A. 20 to 30.

12 Q. Do you believe that you are one of his  
13 more lucrative clients?

14 A. No. Well, I don't know in the pecking  
15 order. I'm not his -- his best client in terms of  
16 bringing him income. I know I'm not number one. Am  
17 I in the top 10, probably.

18 Q. What did Mr. Skinner contribute to the  
19 preparation of the Xactimate reports?

20 A. Because he teaches Xactimate at the local  
21 junior college to adjusters, he has more intimate  
22 access to historical records than most. He can go  
23 back into the Xactimate archives and pull up third  
24 and fourth quarter cost codes for Gulfport for  
25 Katrina.

38 (Pages 146 to 149)

Lewis Edward O'leary, Jr. 10/6/2009

Page 150

1 Q. How much of the input -- sorry, strike  
2 that. How much of the estimate numbers in your  
3 Xactimate reports reflect Mr. Skinner's additions or  
4 corrections?  
5 A. I -- I'm not sure I could come up with  
6 that even if I tried.  
7 Q. Would it be fair to say he provided  
8 substantial changes or revisions to the kind of  
9 initial versions of the reports that you and  
10 Mr. Wiggins prepared?  
11 A. No. He was involved after the initial  
12 push.  
13 Q. And was his involvement substantial or  
14 limited in terms of the multiple end product?  
15 A. Limited.  
16 Q. You worked with Mr. Skinner before this  
17 property?  
18 A. Yes, sir. He's one of the IAs. He is an  
19 independent adjuster that consults with me on  
20 various and sundry situations that come up.  
21 Q. Did you speak with anyone at World Claim  
22 regarding the preparation of the reports? I see  
23 you've identified someone named Michael Fusco.  
24 A. He owns the company. I spoke with one  
25 other person that was there. The specific estimator

Page 151

1 that produced this report, he didn't know where he  
2 was at. It had been three years since the man had  
3 produced the estimate and, apparently, the guy was a  
4 contract estimator much like Jerry is for me on  
5 this, and I was unable to actually find the young  
6 man. Would dearly love to talk to him if I can find  
7 him.  
8 Q. Was it your understanding that that person  
9 who had performed -- produced the World Claim  
10 estimates had inspected the property prior to it  
11 being repaired?  
12 A. Yes, sir. Michael Fusco, and I don't  
13 think he had any specific reason to do it, talked  
14 about this young man as one of the best he had ever  
15 had working for him, and he regretted that he wasn't  
16 still working for him at this time.  
17 Q. Did Mr. Fusco provide any clarification or  
18 additional details that you and Mr. Wiggins were  
19 able to incorporate into your Xactimate estimates?  
20 A. He didn't work these claims on that level.  
21 He was the owner of the company. He was a public  
22 adjuster himself, but he didn't have the intimate  
23 minutiae level knowledge that I was looking for.  
24 Q. So your discussion with Mr. Fusco and  
25 anyone else at World Claim did not really add

Page 152

1 anything of substance to your Xactimate estimate --  
2 A. No.  
3 Q. -- is that fair to say?  
4 A. That's fair to say.  
5 Q. Why don't we go off the record? I think  
6 both of us are losing our voice. I think maybe we  
7 can use a little water.  
8 VIDEOGRAPHER: Off the record at 2:13.  
9 (Off the record.)  
10 VIDEOGRAPHER: On the record at 2:21.  
11 Q. (By Mr. Gilmore) Mr. O'Leary, earlier you  
12 had testified that you had prepared initial  
13 spreadsheets that you then gave to Mr. Wiggins so he  
14 could create an Xactimate report.  
15 A. No, sir. I had indicated that when I do  
16 an estimate, I will commonly do it on a spreadsheet  
17 format. I have my own estimating program that I use  
18 to create my own estimates when I'm doing them by  
19 myself and there's no one available to crunch  
20 numbers for me using a particular format. Because  
21 everybody else had used Xactimate on this case, it  
22 made sense that if I was going to produce yet a  
23 third estimate that it follow the same basic program  
24 as the other two guys and, accordingly, I engaged  
25 Jerry Wiggins to work with me to develop, A, a scope

Page 153

1 to fill in the blanks, and B, to take that scope and  
2 crunch the numbers using Xactimate setting these  
3 numbers -- these scope items out to specific cost.  
4 Q. And when you say "scope," is that  
5 something that you had written up? I'm trying to  
6 understand -- I mean, I understand the word scope,  
7 but you seem to be using it in a different manner  
8 here.  
9 A. We took a World Claim's estimate --  
10 Q. Uh-huh (affirmative response).  
11 A. -- and marked the heck out of it.  
12 Q. Just --  
13 A. And that became our scope combined -- and  
14 if it was too much to put on -- on the page, we  
15 would attach a page to it or write on the back of  
16 the page.  
17 Q. When you say you took the World Claim  
18 estimate and marked it up, you literally took a hard  
19 copy and with a pen --  
20 A. Yes, sir.  
21 Q. -- wrote changes on it?  
22 A. Yes, sir.  
23 Q. Do you still have that marked up --  
24 A. No, sir.  
25 Q. -- World Claim scope?

39 (Pages 150 to 153)

Lewis Edward O'leary, Jr. 10/6/2009

Page 154

1 A. No, sir.  
 2 Q. You threw it away?  
 3 A. The last time I kept stuff like that, I  
 4 had some colorful notes on it that came out, and I  
 5 decided I ain't keeping those anymore.  
 6 Q. When did you throw away the World Claim  
 7 scope?  
 8 A. When I had a working scope I could live  
 9 with that Jerry had produced.  
 10 Q. What date was that?  
 11 A. I can't tell you.  
 12 Q. Was it this year?  
 13 A. When did I produce it? Wasn't it last  
 14 year I produced this estimate, September of '08?  
 15 I'm pretty sure the date on the final draft was  
 16 September of '08. We've got the notebooks right  
 17 over there. We can grab it and see what the date on  
 18 it is if you want.  
 19 Q. We can take a look at it, but you're  
 20 talking about the day of your Xactimate estimates?  
 21 A. Yes, sir.  
 22 Q. Were there items that you thought World  
 23 Claim had added in their initial report that needed  
 24 to be taken out of the estimates you and Mr. Wiggins  
 25 were preparing?

Page 155

1 A. I don't know that we took anything out.  
 2 There were certain units that didn't make sense in  
 3 terms of what they were claiming. Let me think of  
 4 an example. When you replace all of a ceiling, but  
 5 you only have an allowance for half of the attic  
 6 insulation above it where you can't have insulation  
 7 just hanging there, you've got to have all  
 8 insulation to match the square footage number of the  
 9 ceiling.  
 10 Q. If all of the insulation needs to be  
 11 replaced.  
 12 A. Well, you pull a ceiling down, that bulk  
 13 insulation is coming down with it. It ain't going  
 14 to sit there in thin air. You're going to have to  
 15 replace it also because now it's on the carpet.  
 16 Q. That's another item that you thought they  
 17 had omitted or was incomplete on their estimate?  
 18 A. Their -- their estimate was not perfect.  
 19 Q. What I'm trying to understand is are there  
 20 any items either in the World Claim estimate or the  
 21 Nationwide estimate that you thought were improperly  
 22 included and you left out of your estimate?  
 23 A. I can't remember a specific example where  
 24 I could say that.  
 25 Q. It's fair to say all of the differences

Page 156

1 between your estimates and the World Claim and  
 2 Nationwide estimates are that you've either added  
 3 things or made the unit prices higher; is that fair  
 4 to say?  
 5 A. Or corrected the scope was included. The  
 6 example I just gave you a second ago didn't have  
 7 anything to do with pricing, it had to do with the  
 8 scope. You've got half a ceiling worth of  
 9 insulation on your estimate and an entire ceiling  
 10 and it's blown insulation, you're going to lose all  
 11 of that ceiling insulation when you pull the  
 12 Sheetrock down.  
 13 Q. That's fair. So would it be fair to say  
 14 all of the changes in your report from the World  
 15 Claim and Nationwide estimates are either adding  
 16 items, enlarging the scope of items or increasing  
 17 the price of items?  
 18 A. That pretty well describes it, I believe.  
 19 Q. I'm still working on page 2 of your report  
 20 under the heading "Discussion," and you say you  
 21 relied on the wind speed estimates from Steve  
 22 Harned, correct?  
 23 A. Yes, sir.  
 24 Q. Other than the meteorological information  
 25 that he provided, are there any other sources of

Page 157

1 wind speeds that you are relying on in your report?  
 2 A. I have the same database that Steve has to  
 3 work from, which is the NOAA's HRD wind models and  
 4 the Katrina report. I worked from the final edition  
 5 of the Katrina report as opposed to the interim  
 6 edition that this Mr. Slees -- not Slees, I'm sorry.  
 7 What was his name again?  
 8 Q. Skees.  
 9 A. Skees?  
 10 Q. Uh-huh (affirmative response).  
 11 A. My apologies. He was -- he was citing the  
 12 interim edition in December of 2005. The final  
 13 edition had significant changes to it in August of  
 14 2006, which is the one I worked with.  
 15 Q. Did you consult with any other  
 16 meteorologist besides Mr. Harned?  
 17 A. No.  
 18 Q. Did you look at anemometer numbers from  
 19 any anemometers that measured wind speeds along the  
 20 coast?  
 21 A. No.  
 22 Q. Are you generally familiar with anemometer  
 23 numbers?  
 24 A. I -- I am familiar with the fact that  
 25 NOAA's Hurricane Research Division affectionately

40 (Pages 154 to 157)

Lewis Edward O'leary, Jr. 10/6/2009

Page 158

1 referred to as HRD takes all of the private and  
2 public data including local water towers, water  
3 pumping stations, all of their data to create their  
4 combined wind models after the storm. They are the  
5 gold standard in the industry of who produces the  
6 best wind data.

7 Q. In your review then, NOAA's H wind --

8 A. HRD wind models.

9 Q. Right. And the HRD produces the H wind  
10 analysis, correct?

11 A. I've never heard it worded that way  
12 before, but the wind data provided by the Hurricane  
13 Research Division of NOAA, their wind models and the  
14 H -- the Hurricane Research Center, HRC report of  
15 August 2006 are considered the two sources for  
16 Katrina wind data and flood data.

17 Q. You have assumed for purposes of your  
18 report that the maximum wind gusts were 110 miles  
19 per hour, that's the speed cited here; is that  
20 correct?

21 A. He says increased to over 110. He --  
22 privately, we talked in the range of about 114, but  
23 for the sake of this report, we are just taking the  
24 position over 110.

25 Q. Somewhere in between 110 and 114?

Page 159

1 A. Yes, sir.

2 Q. In your opinion, will there be any  
3 material difference between 110 and 114 mile per  
4 hour wind speed on structures such as the Carriage  
5 House property?

6 A. We don't intend to go there. These  
7 windows were rated for 35 miles an hour, and  
8 70 miles an hour is four times the force because it  
9 works exponentially. At 105 miles an hour, it's  
10 nine times the force, which explains why the window  
11 spray theory is so applicable to a property like  
12 this.

13 Q. Did you perform calculations based on wind  
14 speed inputs from Mr. Harned designed to show that  
15 the seals around windows and sliding doors would  
16 have failed during the course of Hurricane Katrina?

17 A. I have the test data for these style  
18 windows that show what they are rated to, and beyond  
19 that, they will fail, and it's reliable test data  
20 from the industry itself. These are DP20s. They're  
21 good for about 35 miles an hour.

22 Q. And when we -- when you say fail, that  
23 doesn't necessarily mean that the window shatters,  
24 right?

25 A. That's correct. We're not talking about

Page 160

1 structural failure. Most people think that a  
2 window, if it's good for 100 miles an hour, that  
3 it's also not going to leak before 100 miles an  
4 hour. That's not even close to the truth. The test  
5 pressure for your normal window against leak  
6 resistance is around one-tenth of its structural  
7 rating. A DP30, which is a common rating for a  
8 current window, is tested one-half times at  
9 45 pounds per square foot structurally, but leak  
10 resistance is only 4.5 pounds per square foot.

11 Q. Have you made any calculations to  
12 determine how much water would begin to intrude once  
13 the seals around windows and sliding doors failed?

14 A. There's actually testing going on in  
15 Florida right now to try to quantify this.

16 Q. You, yourself, have not tried to quantify  
17 it?

18 A. That is correct. That is correct.

19 Q. You would need to know how much rainfall  
20 was being blown during Hurricane Katrina that might  
21 intrude through these failed seals?

22 A. There's a lot of factors. Whether or not  
23 the window is in any sort of a bind from minor  
24 racking is a factor.

25 Q. What are some other factors beyond --

Page 161

1 A. Age.

2 Q. -- how much rain was actually falling and  
3 whether the window had been racked, is that what you  
4 would say?

5 A. Racking is -- is -- everybody thinks  
6 racking is something that's all twisted out of shape  
7 like a pretzel. Low level racking where you're  
8 approaching the design limit of a structure occurs.  
9 Buildings do move, caulked joints around windows and  
10 doors do break because of this minor movement beyond  
11 what the caulked joint can handle.

12 Q. Beyond those two factors, how much  
13 rainfall and any sort of racking windows and sliding  
14 doors, what other factors would you need to be able  
15 to quantify in order to calculate how much rain  
16 actually was being intruded through the failed seals  
17 around windows and sliding doors?

18 A. Wear and tear. As the window gets older,  
19 the tolerances between the sash and the guides may  
20 open up. It may not be as tight as it was when it  
21 was new. You remember these test specs I'm quoting  
22 to you are based upon the window being new.

23 Q. Any other factors that you would need to  
24 quantify in order to calculate how much wind blown  
25 rain would have intruded past the seals of the

41 (Pages 158 to 161)

Lewis Edward O'leary, Jr. 10/6/2009

Page 162

1 windows and the sliding doors?  
 2 A. Direction of the rain or direction of the  
 3 wind, excuse me, whether or not there was any cover  
 4 or not, the intensity of the rain. One inch per  
 5 hour is going to have a signifi -- significantly  
 6 less factor on something like this than three inches  
 7 per hour. There's -- there's enough factors  
 8 involved here to say that it would be nearly  
 9 impossible for someone without a lot of information  
 10 to quantify this.

11 Q. And you have not attempted to quantify any  
 12 of those factors for purposes of your analysis in  
 13 this report, correct?

14 A. I have attempted to take other  
 15 situations -- I mentioned Shell Landing to you,  
 16 which is also in Gautier, a brand new DP30 window,  
 17 which is a 50 percent higher rating than these  
 18 windows, brand new, no wear and tear, and  
 19 significant evidence all the way across the room  
 20 where there was no furniture to block it, on duplex  
 21 outlets, switch plates, trim around doors and open  
 22 wall areas themselves across from this window that  
 23 was not open and did not fail, the wind was strong  
 24 enough to basically coat that wall across the room  
 25 10 feet away.

Page 163

1 Q. I don't think that answered my question.  
 2 My question was all of the factors that we ran  
 3 through that would be required to be quantified in  
 4 order to calculate how much wind blown rain intruded  
 5 through the windows and sliding doors at the  
 6 Carriage House properties, have you made any efforts  
 7 to quantify any of those factors?

8 A. Other than the broad brush methodology  
 9 I've just described to you and the mustaches around  
 10 the windows that I found that we've also talked  
 11 about earlier, I found evidence that it did occur  
 12 and likely occurred more than just a drop or two.  
 13 Whether or not it was 50 gallons or five gallons  
 14 that came in during the six or seven hour process, I  
 15 can't quantify anymore than to say the evidence is  
 16 it was significant. That's -- no one is going to be  
 17 able to, in all likelihood, come up with a more  
 18 defined than that.

19 Q. Well, I mean, for instance, can you say  
 20 whether there was any --

21 A. I'm sorry.

22 Q. Can you say whether there was any standing  
 23 water on the first floor ground as a result of rain  
 24 that had intruded through failed seals around the  
 25 windows and sliding doors?

Page 164

1 A. Had the property not flooded, very  
 2 probably, but the fact that the property did flood,  
 3 that evidence would no longer be available to view.

4 Q. So you can't tell the jury there were --  
 5 there was one inch of water on the ground from wind  
 6 driven rain that intruded through failed seals  
 7 around windows and doors, correct?

8 A. I could not quantify it to that level.

9 Q. Okay. Still working on page 2 under the  
 10 "Discussion" heading, Point C, you discuss  
 11 vandalism, which we had briefly mentioned earlier in  
 12 your deposition, and you state specifically on the  
 13 last sentence, "Vandals turned to breaking windows  
 14 and sliding glass doors along with stripping out the  
 15 copper piping and wires." Did I read that  
 16 correctly?

17 A. Yes, sir.

18 Q. How did you reach that -- the opinion that  
 19 vandals turned to breaking windows and sliding glass  
 20 doors along with stripping out copper piping and  
 21 wires?

22 A. Initially, I got it from Donna Bass.  
 23 Following up to try to attempt to determine whether  
 24 or not that was as bad as she described it, David  
 25 Pilger provided that input to Tammie. Tammie

Page 165

1 Crossley was one of my main contacts in producing a  
 2 picture on this, and I didn't know Pilger and  
 3 Stewart as well as she did because she was working  
 4 with them on claims, so there was certain things I  
 5 asked her to do in terms of investigating because  
 6 she could get through to these people better than I  
 7 because I was a stranger in the crowd. And since  
 8 Donna Bass never worked for Pilger or Stewart, we  
 9 were looking at two entirely separate sources,  
 10 neither of which had any dog in the hunt.

11 Q. Have you seen any photographs that show  
 12 copper piping and wiring having been stripped out?

13 A. No, I have not.

14 Q. Can you turn to page 4 of your report?  
 15 Again, that's Defense Exhibit 174.

16 A. Yes, sir.

17 Q. And you -- at the beginning of this page,  
 18 you set up your conclusions regarding your analysis  
 19 for the Carriage House property, correct?

20 A. Yes, sir.

21 Q. And you have a summary of the Xactimate  
 22 estimates you prepared for each building, correct?

23 A. Yes, sir.

24 Q. Your total estimate is \$6,334,990.03,  
 25 correct?

42 (Pages 162 to 165)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 166</p> <p>1 A. Yes, sir.</p> <p>2 Q. When you compare that to the estimates</p> <p>3 that Nationwide -- Nationwide's adjusters developed,</p> <p>4 that totaled \$944,922.71, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So your estimate is more than 5 million</p> <p>7 higher than Nationwide's estimate; is that correct?</p> <p>8 A. I believe that math is correct, yes, sir.</p> <p>9 Q. You have got a series of numbered points</p> <p>10 at the bottom of page 4 here, and the first one</p> <p>11 refers to the fact that Nationwide estimate includes</p> <p>12 no decking replacement, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And in fact, as you know, the estimates</p> <p>15 have a line item for replacing the decking, correct?</p> <p>16 A. There is a note on there that basically</p> <p>17 says tell us later.</p> <p>18 Q. And that indicates an understanding that</p> <p>19 there may be repairs that need to be paid for for</p> <p>20 the decking, but a lack of information as to what</p> <p>21 that scope of decking replacement was and how much</p> <p>22 it costs; is that fair to say?</p> <p>23 A. That is a position that Nationwide took,</p> <p>24 tell us how much decking you replaced later.</p> <p>25 Q. Well, have you had any conversations with</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. GILMORE: Go off the record.</p> <p>2 VIDEOGRAPHER: Off the record at 2:43.</p> <p>3 End of tape four.</p> <p>4 (Off the record.)</p> <p>5 VIDEOGRAPHER: Beginning tape five. On</p> <p>6 the record at 2:44.</p> <p>7 Q. (By Mr. Gilmore) In your estimate, did</p> <p>8 substantially all of the decking for the roofs at</p> <p>9 the Carriage House property require replacement?</p> <p>10 A. There was a lot of decking replaced, but</p> <p>11 it was nowhere near a total decking replacement. I</p> <p>12 think my estimates reflect that.</p> <p>13 Q. As point 2, you have average dumpster</p> <p>14 rates, and you say, "It is normal practice to allow</p> <p>15 at least two dumpster loads for roof decking jobs of</p> <p>16 this size. Nationwide has allowed only one at</p> <p>17 \$305.04, which is a third below the average \$450</p> <p>18 post-Katrina rates." Did I read that correctly?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Well, when you say it's normal practice to</p> <p>21 allow at least two dumpster loads for a roof decking</p> <p>22 job of this size, what is your source for that?</p> <p>23 A. I've had to unload about half of a</p> <p>24 dumpster because of the weight issue. You -- if you</p> <p>25 can get it in a dumpster, a lot of people believe,</p>
<p style="text-align: right;">Page 167</p> <p>1 anyone at Greg Stewart's company that worked on the</p> <p>2 repairs of the property to get an understanding as</p> <p>3 to how much of the roof decking actually was</p> <p>4 replaced?</p> <p>5 A. Yes, sir.</p> <p>6 Q. You have?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Who did you have those discussions with?</p> <p>9 A. He had two superintendent on the job.</p> <p>10 Q. Those two superintendent that we don't</p> <p>11 know their names right now but --</p> <p>12 A. But you will have their names.</p> <p>13 Q. What did those two superintendents tell</p> <p>14 you about the scope of decking replacement and the</p> <p>15 repairs of the Carriage House property?</p> <p>16 A. Well, clearly, this picture shows daylight</p> <p>17 where a sheet of four-by-eight plywood used to be</p> <p>18 and now you're looking at the sky. It has been my</p> <p>19 experience and my training that if you see damages</p> <p>20 when you're writing an adjustment, you write up what</p> <p>21 you can see, and if you're going to leave a back</p> <p>22 door open for a man to come back and supplement his</p> <p>23 claim, you leave it, but you write up what you can</p> <p>24 see.</p> <p>25 VIDEOGRAPHER: One minute.</p>	<p style="text-align: right;">Page 169</p> <p>1 well, you ought to be able to pick it up, but they</p> <p>2 refuse to pick it up because you've gone over the</p> <p>3 weight limit, and if you have to unload a dumpster a</p> <p>4 time or two, you won't make that mistake again.</p> <p>5 Somebody took the volume of a dumpster and figured</p> <p>6 out, well, I can do all of this with one dumpster,</p> <p>7 and after you run the calculations on how much</p> <p>8 weight you just put in a 40 yarder, and you contact</p> <p>9 the dumpster people and ask will you pick that up</p> <p>10 with that much load in it, and they tell you no, you</p> <p>11 won't do it twice in a row.</p> <p>12 Q. So your opinion there is not necessarily</p> <p>13 the volume of the total debris that needs to be</p> <p>14 cleaned up, just whether you can transport a full</p> <p>15 dumpster. Is that your position?</p> <p>16 A. It's a weight issue.</p> <p>17 Q. Weight issue. The post-Katrina rates, you</p> <p>18 say are \$450. What's your source for that number?</p> <p>19 A. Local. Remember, I was raised out here.</p> <p>20 Q. Well, when you say you're a local, I mean,</p> <p>21 can you be more specific?</p> <p>22 A. I was involved in a lot of Katrina claims,</p> <p>23 and I got local input on a variety of different</p> <p>24 things. At some point in working Katrina claims,</p> <p>25 certain numbers became second nature to me in terms</p>

43 (Pages 166 to 169)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 170</p> <p>1 of what was the normal rate for people like Waste 2 Industries, BFI. These guys all know what they -- 3 they charge, and they -- they kind of work roughly 4 in the same pricing category. You're not going to 5 get one guy that works for a third less than the 6 other one, and knowing what their rates are, I'm 7 telling you, you can't get it done for these 8 numbers. 9 Q. Do you have specific names of weight -- of 10 debris removal companies? 11 A. I will be happy to provide you with 12 information directly from BFI or Waste Industries or 13 any of the other biggies that are out there in terms 14 of what their rates are. I will be happy to get 15 that for you, sir, or what the Xactimate would show 16 for the same job. 17 Q. I would appreciate that. 18 A. Yes, sir. 19 Q. Mr. Todd got it, no need to worry, Mr. 20 O'Leary. Point 3, you say that Nationwide made no 21 allowance for a two-story charge even though such a 22 line item is available in Xactimate. All right. 23 Now, when you say even though such a line item would 24 be available in Xactimate -- 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 172</p> <p>1 up on a roof and it's twirling around, that's a 2 whirly bird. It's a ventilator. The nickname of 3 them are whirly birds. 4 Q. Did the Carriage House buildings each have 5 whirly birds? 6 A. I think they did. 7 Q. You would see them in photographs, right? 8 A. The photographs should tell the tale. 9 Q. You say, "Cover and protect mature 10 landscaping in place here." That's another line 11 item available in Xactimate, correct, item 3? 12 A. There are certain extra charges that are 13 legitimate services associated with this reroofing 14 that have been left off of their estimate. There 15 are actually items that you can put into Xactimate 16 and put an explanation box after the item in terms 17 of why you've added this item, which is not in the 18 estimate. To give you an example, do you have a 19 composition roof on your home? I'm just trying to 20 give you an example here, that's all. 21 Q. Well, let me ask this question because I 22 don't think the jury really cares about my house as 23 much as the Carriage House properties. 24 A. All right, sir. 25 Q. When you would get -- hire a contractor to</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. -- I guess my question is, is the fact 2 that the item can be selected in an estimating 3 program sufficient for making the decision to add it 4 to an estimate? 5 A. If it's a two-story building, the operator 6 of the estimate has to know that such items are 7 available. I mentioned to you earlier that a lot of 8 these adjusters are relying on these programs to 9 guide them, but the program's not there to guide 10 them. The program is there to serve as a tool for 11 them. If they don't already know that there's a 12 steep pitch charge, that there's a two-story charge, 13 that there's a charge for whirly birds, for wall 14 flashing, for lead Jackson boots, drip edge, all of 15 these things are in the program. 16 Q. Well, the fact that it's in the program, 17 does that have any relation to whether that's 18 something that's actually charged by contractors? 19 A. I can promise you contractors charge for 20 these things. I've -- I've done roofing in-house 21 for years, and if you don't charge extra for these 22 things, you ain't going to make any money on a roof 23 job. 24 Q. What is that whirly bird? 25 A. Have you ever seen something that's round</p>	<p style="text-align: right;">Page 173</p> <p>1 replace a roof, is item -- a line item such as 2 covering and protecting, when you say mature 3 landscaping, I assume you mean like a tree near the 4 house, is that going to be a separate line item? 5 A. It's common that -- that in a property 6 that's this old, this property is 35 years old, that 7 mature landscaping is in place, and you bring 8 plywood sheets out and you cover it, so that as 9 you're pitching the shingles off the roof, and 10 you've got to first dislodge from the nails, and 11 commonly, a lot of them will slide down to the edge 12 before you can get them over into the dumpster. The 13 dumpster is going to be at one point around the 14 roof. 15 Q. So this -- the mature landscaping you're 16 referring to here is flower beds and shrubs on the 17 ground? 18 A. Yes, sir. You tear them up, you're going 19 to buy them. 20 Q. It's fair to say, given the storm surge 21 inundation, there would have already been 22 substantial damage to these -- 23 A. Well, if you've got 20 year old bushes 24 around it, they're going to survive, but you could 25 tear them to pieces when several hunks of shingles</p>

44 (Pages 170 to 173)

Lewis Edward O'leary, Jr. 10/6/2009

Page 174

1 come sliding off of the edge.  
 2 Q. Point 4, you say, "27 man hours for  
 3 general cleanup is at best half of the allowance  
 4 necessary to remove a solid field of debris created  
 5 by most of the wall block wall collapsing and the  
 6 removal of the remaining section."  
 7 A. First of all, this item right here is  
 8 talking about a block wall that collapsed. If  
 9 you've got chunks of block wall that have fallen  
 10 over that vary from a piece of a block to maybe five  
 11 or six blocks still glued together by the mortar  
 12 that connected them, you're going to come in here  
 13 with a skid-steer or a front-end loader, and you're  
 14 going to load it into a dumpster. There was no  
 15 allowance for any equipment like this. The --  
 16 whoever wrote this estimate assumed that guys would  
 17 just come in there and break it up into tiny enough  
 18 pieces so that they could handle it and put one  
 19 individual piece at a time in a dumpster, and that  
 20 would take forever to do. The approach to handling  
 21 this collapsed block wall was not real world.  
 22 Q. Well, do you know how the debris from the  
 23 collapsed brick wall actually was cleaned up?  
 24 A. I -- I watch them use skid-steers because  
 25 they own them.

Page 175

1 Q. Well, you didn't watch the contractor --  
 2 A. Not on this job.  
 3 Q. -- on this job?  
 4 A. That is correct.  
 5 Q. Do you know, not have an opinion?  
 6 A. I asked them how they handled that, and  
 7 they said we probably picked it up with a  
 8 skid-steer.  
 9 Q. Who told you that?  
 10 A. One of the two men's names who you are  
 11 about to get, I believe, or they told Jerry. You  
 12 know, after a while if you do enough of these in  
 13 succession, they all kind of begin to run together.  
 14 Q. You said "or they told Jerry."  
 15 A. I told you that Jerry followed in behind  
 16 me on some stuff where we needed additional input.  
 17 Q. And you did say that. Did Mr. Wiggins  
 18 also himself have conversations with people at Greg  
 19 Stewart's company?  
 20 A. He's had conversations with these same  
 21 people, yes, sir.  
 22 Q. And you are aware of him having  
 23 conversations that you, yourself, were not  
 24 personally a part of --  
 25 A. That's correct.

Page 176

1 Q. -- that you learned of later?  
 2 A. I trust him completely. He's my  
 3 brother-in-law.  
 4 Q. Is he married to your sister or is he --  
 5 A. He's my sister's younger brother.  
 6 Q. Your sister's younger brother?  
 7 A. Wait a minute. My wife's younger brother.  
 8 Wait a minute. My wife's younger brother, yeah. My  
 9 apologies for that.  
 10 Q. Only two options. Now, in number 5, you  
 11 say, "No allowance was afforded for broken, twisted  
 12 and/or racked framing members or the exterior  
 13 sheathing that would have been behind the block  
 14 walls at these locations." Did I read that  
 15 correctly?  
 16 A. Yes, sir.  
 17 Q. You would agree that the brick veneer that  
 18 collapsed, collapsed because of inadequate  
 19 attachments to the framing sheathing, correct?  
 20 A. I would be speculating to say that.  
 21 Q. That's fair. Do you not hold that opinion  
 22 then?  
 23 A. When a building wiggles in a storm like  
 24 this, I'm not sure exactly what was happening. I  
 25 know this much, there are a lot of properties around

Page 177

1 this one that didn't have roofs that were scraped  
 2 virtually clean like this. We've stopped short of  
 3 saying that it appears as though tornadic type of  
 4 activity may have come through here, but you would  
 5 be surprised how much shaking and baking goes on if  
 6 a tornadic type of activity came through here and  
 7 caused this kind of wholesale roof damage and an old  
 8 block wall can come down.  
 9 Q. My question was a little bit more  
 10 specific. Do you hold an opinion as to whether or  
 11 not the brick walls were inadequately attached to  
 12 the framing sheathing?  
 13 A. By today's standards, absolutely, but this  
 14 is a 35 year old property. Standards were much  
 15 lower back then. You could build a property like  
 16 this to a wind code substantially lower than the  
 17 current wind codes back then.  
 18 Q. Assuming that the brick veneers were not  
 19 attached --  
 20 A. By the way, these are block. I'm sorry.  
 21 Q. -- to -- sir?  
 22 A. These are block, not brick. The brick is  
 23 on Compass Point.  
 24 Q. I'm sorry. If I said brick, I meant  
 25 the -- the concrete -- the concrete masonry units.

45 (Pages 174 to 177)

Lewis Edward O'leary, Jr. 10/6/2009

Page 178

1 A. Yes, sir.

2 Q. Assuming that the block walls collapsed --

3 that collapsed were not attached to the framing and

4 sheathing, when that collapse occurred, they would

5 not necessarily have ripped out any of the framing

6 or sheathing, correct?

7 A. Not necessarily, but the picture seemed to

8 support that there was something there, whether it

9 was felt or -- or what have you. You see various

10 areas of black, and I blew these pictures up, and it

11 suggested that there was some sort of black board

12 there.

13 Q. And the areas in black in photos 6 and 7

14 on page 4 of your report --

15 A. Yes, sir.

16 Q. -- those aren't holes in the property

17 sheathing, those are black felt paper still stuck to

18 the sheathing; is that correct?

19 A. Well, I can't tell whether it's felt or

20 asphaltic board. Back in these days, they had an

21 asphalt impregnated exterior sheathing board that

22 was commonly used as the weather barrier. I suspect

23 that's what it was.

24 Q. But the point is that it's not holes that

25 have been ripped out of the plywood, that's your

Page 179

1 understanding, right?

2 A. That's correct, sir.

3 Q. Turn to the next page, page 5.

4 A. Yes, sir.

5 Q. Under point 7, you say, "In units where

6 the ceilings collapsed, the extreme amount of

7 moisture that was held there for an extended period

8 would have delaminated the plywood subfloors

9 requiring their replacement. Nationwide tendered no

10 such allowance." Did I read that correctly?

11 A. Yes, sir.

12 Q. And you're referring to the ceilings that

13 collapsed on the second story of the units?

14 A. Well, the picture that you're looking at,

15 the second picture, I can see what appears to be

16 trusses, so you're looking into an attic space, so

17 that would be a second floor ceiling.

18 Q. And so the plywood subfloors you're

19 talking about are the plywood underneath the

20 flooring of the second story flooring?

21 A. Yes, sir.

22 Q. Point 8, you say, "As a rule, Nationwide

23 affords six inches of insulation in the attic

24 spaces. Standard practice would afford the industry

25 standard of 10 inches for the replacement

Page 180

1 insulation." Do you know how much insulation

2 actually was in the attic spaces of the Carriage

3 House properties before Hurricane Katrina?

4 A. It was suggested to me that the blown

5 insulation in the areas that were not damaged was

6 well above the top of this two-by-six, which

7 suggests that it's well above six inches.

8 Q. When you say it was suggested to you --

9 A. There were people that were heavily

10 involved in this project in the restoration of it,

11 and not all ceilings were lost, which means there

12 were areas of ceiling where the insulation remained.

13 Q. So based on -- essentially probably these

14 two superintendents who worked on the repair

15 project?

16 A. I don't remember who specifically, but

17 certainly the evidence is still out there. During

18 the appraisal process, if we need to look at some of

19 these units where no work was ever done, we can

20 certainly verify whether or not it was 10 inches or

21 whether or not it's six inches.

22 MR. BROWN: Could we get --

23 MR. GILMORE: Go off the record.

24 VIDEOGRAPHER: Off the record at 3:02.

25 (Off the record.)

Page 181

1 VIDEOGRAPHER: On the record at 3:14.

2 Q. (By Mr. Gilmore) All right. Still

3 working on page 5 of your report, Defense

4 Exhibit 174, under point 9, you say, "Nationwide has

5 afforded minimal amounts of wall replacement where

6 significant staining suggest these walls were soaked

7 by water entering from above which had run down." I

8 guess in your opinion whether to replace a wall

9 would be based on signs of water stains or

10 moistness; is that correct?

11 A. These pictures indicate significantly more

12 than just staining. These tiny little pictures are

13 not good pictures in terms of having this

14 discussion, but there is significant mold on the

15 surface of these walls suggesting that a major

16 amount of water got into this wall cavity. The

17 second picture, I mentioned previously the mustache

18 around windows, you can see the -- the mold mustache

19 around the edge of that window.

20 Q. You're referring to the bottom photograph

21 on page 5?

22 A. No, sir, but the bottom photograph would

23 also be a good example if it were a better picture.

24 I was referring to the second photograph. There's a

25 window in that photograph, and there is a mold

46 (Pages 178 to 181)

Lewis Edward O'leary, Jr. 10/6/2009

Page 182

1 mustache around that window suggesting that water  
 2 blew in around that window as opposed to coming from  
 3 above. Certainly there's enough staining above it  
 4 also to suggest a major amount of water came from  
 5 above, also, but a number of these walls were not  
 6 included. Now, it could have easily been a case  
 7 that this mold developed over time. These pictures,  
 8 I believe these are March '06 pictures, and I  
 9 believe the last adjuster inspection was November --  
 10 I'm sorry, October. There is a late September  
 11 adjustment and there's a late October adjustment  
 12 provided by Nationwide adjusters, which suggests to  
 13 me that by roughly the middle of October, they were  
 14 already heading back to the office to work up  
 15 estimates because these are big estimates and they  
 16 take time to produce.

17 Q. So you believe it is quite possible that  
 18 the mold that we see on photographs in March was not  
 19 there in October or November?

20 A. I -- I believe that's a very real  
 21 possibility.

22 Q. And there could have been steps to  
 23 mitigate the amount of moisture on the walls between  
 24 October and November of '05 and March of '06 to  
 25 prevent that mold from growing during that period,

Page 183

1 correct?

2 A. Well, there -- there were tarps on the  
 3 roof, but it appears even from that three-page  
 4 report that -- I don't know why I can't remember his  
 5 name -- Skees, Mr. S.

6 Q. Let's call him Mr. Skees. I will correct  
 7 you if you mispronounce his name.

8 A. Very good, sir. Those tarps were torn up  
 9 in that picture that he took where there was one  
 10 building that had no tarp at all on it, and the  
 11 other buildings had tarps on them, but they were  
 12 clearly damaged from wind. No matter how good you  
 13 put tarps on, tarps are just a temporary cover.  
 14 They're not -- they're just not going to hold up  
 15 very well over the long haul because the Gulf Coast  
 16 gets a lot of squalls and a squall will tear a tarp  
 17 up.

18 Q. Now, certainly, at least with respect to  
 19 the bottom photograph on page 5 --

20 A. Yes, sir.

21 Q. -- that appears to be a --

22 A. It's an upstairs apartment with blown  
 23 insulation all over the floor.

24 Q. Throughout the photographs, it is fair to  
 25 say that the mold is growing closer to the floor

Page 184

1 throughout these buildings. It's more prevalent  
 2 than in other locations in the interior?

3 A. Well, water does have a tendency to run  
 4 down once it gets in a wall. You get wall -- water  
 5 in a water -- water in a wall cavity, over time, it  
 6 will show up more toward the bottom of the wall  
 7 because that's where the water is going to hit.  
 8 There's insulation in there which is going to  
 9 prevent it from going straight away down, but  
 10 fiberglass insulation has a tendency not to get wet.  
 11 It just lets the water remain active until it finds  
 12 some level to stop at.

13 Q. Point 10, you say, "Because the floor  
 14 decking throughout the upper rooms would have been  
 15 soaked, the removal and replacement of bath vanities  
 16 and all base trim would have been required." Did I  
 17 read that correctly?

18 A. Yes, sir.

19 Q. Now, it's possible to remove a vanity to  
 20 replace the floor decking and reinstall that same  
 21 vanity if the vanity itself had not been damaged,  
 22 right?

23 A. If the vanity is screwed to the wall, you  
 24 can unscrew it and put it back. If -- if it's a  
 25 typical pressed board vanity where the sides are a

Page 185

1 single piece and the water wicks up through this  
 2 pressed board, you ain't got nothing left to save.

3 Q. Well, do you know what kind of vanities  
 4 were installed?

5 A. They were pressed board vanities --

6 Q. Do you --

7 A. -- typical apartment grade. I'm sorry.

8 Q. Sorry. My -- were you able to ask and  
 9 find out from the contractors who made the repairs  
 10 whether the fact they had to replace all of the  
 11 vanities in the upstairs?

12 A. They did not have to replace all of the  
 13 vanities. This property was not totally damaged in  
 14 any building, so there were certain elements in this  
 15 property that was saved including some vanities, and  
 16 in other places, the vanities had to be replaced.  
 17 There's a disadvantage of putting a vanity directly  
 18 on the floor if it's a pressed board vanity. You  
 19 know what I mean when I say pressed board, it's not  
 20 like a true piece of lumber. It's wood fibers or  
 21 wood chips or sawdust glued together, and it will  
 22 have a vinyl piece over the outside of it that makes  
 23 it look like wood, but it's not.

24 Q. Your estimates -- how -- how did you know  
 25 how many replacement vanities and base trim was

47 (Pages 182 to 185)

Lewis Edward O'leary, Jr. 10/6/2009

Page 186

1 required?

2 A. We attempted to get the input we could

3 from people like Donna Bass and Greg Stewart's team

4 and Tammie.

5 Q. Did they provide that to you on a

6 room-by-room or building-by-building basis?

7 A. We spent a fair amount of time -- I think

8 we ended up paying Tammie Crossley \$5,000 for the

9 amount of -- massive amount of time she spent with

10 us on this project.

11 Q. What did Ms. Crossley do?

12 A. She basically took what we thought and

13 turned it as best she could into correct

14 information.

15 Q. When you say what you thought, you

16 provided her with your initial run of Xactimate

17 reports?

18 A. We provided her with her competitor's

19 estimate, World Claim's estimate, the guy that beat

20 her out for the assignment and got her to help us

21 validate what was wrong with it, what was right with

22 it and to create a final estimate.

23 Q. How did you go about correcting the World

24 Claim estimate that you then used as a starting

25 point for your own Xactimate estimates?

Page 187

1 A. All of these people that were involved in

2 producing estimates originally, in defense of

3 Nationwide, only saw the damages up to a point.

4 Beyond that point, mold, vandalism were factors that

5 increased the scope of the repairs necessary. World

6 Claims didn't know what was beyond that point.

7 Nationwide didn't know, I guess, what was beyond

8 that point. The only people that remained actively

9 involved with this project as it was rebuilt knew

10 what the final shape was when it was sold by Ralph

11 Brockman to these people.

12 Q. So was Tammie Crossley someone who had

13 first-hand knowledge of what the actual repairs

14 were?

15 A. She had first-hand access to the people

16 who were clients and her friends that aided me in

17 putting a picture together because they are the ones

18 that bought it and had no reason to lie to me about

19 what they had to repair versus what they saved.

20 Q. So she had discussions with Greg Stewart

21 and the people at his company about the scope of

22 repairs?

23 A. She had most of the conversations.

24 Q. And then she relayed those conversations

25 to you and Mr. Wiggins in the course of preparing

Page 188

1 Xactimate estimates?

2 A. Keep in mind I was -- I was going to the

3 Coast every other week anyway. I was in her office

4 regularly. These were her contacts. These were

5 people that would stop what they were doing and talk

6 to her, but it wasn't until later that I ended up

7 doing work for them where I could garner some of the

8 same type of clout with them.

9 Q. Page 12 -- I'm sorry, point 12 on page 5

10 of your report --

11 A. Yes, sir.

12 Q. -- I'm sorry, point 11, and you're again

13 talking about vandalism damage.

14 A. Yes, sir.

15 Q. As we sit here today, can you tell the

16 jury how many doors or windows were broken either by

17 the National Guard or vandals at the Carriage House

18 property?

19 A. I can only tell you that the number of

20 doors I have, front doors on these properties are

21 all attributable to the National Guard or vandalism

22 according to the input I've gotten, and I didn't get

23 that input from Ralph. I got it from the people

24 that bought the place from them.

25 Q. Are you saying -- let me just clarify what

Page 189

1 you're saying. You're saying each and every door to

2 each unit at the Carriage House property was

3 destroyed by either the National Guard or vandals?

4 A. I don't think so.

5 Q. I'm sorry, that's my question.

6 A. Each and every front door --

7 Q. Uh-huh (affirmative response).

8 A. -- that I'm showing as a replacement on my

9 estimate was the result of vandalism or National

10 Guard. I don't think I have each and every door

11 on -- on the property on my estimate.

12 Q. Now, you say that there was related loss

13 of Sheetrock and cabinet damages as a result of the

14 vandalism and theft of copper piping and wiring; is

15 that correct?

16 A. Yes, sir.

17 Q. Now, at least -- certainly with respect to

18 the first floor, the Sheetrock and cabinetry would

19 have been damaged by the storm surge flooding prior

20 to the vandalism, correct?

21 A. With any flooding, damage would definitely

22 be in place, whatever that damage is, before the

23 vandalism, yes, sir.

24 Q. And you haven't made any effort to

25 segregate storm surge flooding damage from vandalism

48 (Pages 186 to 189)

Lewis Edward O'leary, Jr. 10/6/2009

Page 190

1 damage on the first floor, have you?  
 2 A. I've not attempted to segregate the  
 3 vandalism damage from the wind damage either. If  
 4 you've got a plug that's roughly this high, 18  
 5 inches up, it's going to be above some of the  
 6 flooding and below some of it, and the wire runs up  
 7 from there because there's a slab to go down, so  
 8 it's not going to go down. If people are pulling  
 9 wire out of walls, they're going to rip the  
 10 Sheetrock going up as opposed to going down.  
 11 Q. Did you see any photographs that showed  
 12 kind of a straight line rip of a wire out of  
 13 Sheetrock?  
 14 A. No, sir.  
 15 Q. Did you see any photographs that showed a  
 16 piece of copper piping actually cut out of the  
 17 connecting parts?  
 18 A. No, sir, I have not.  
 19 Q. Now, on point 12 on page 5 on your  
 20 report --  
 21 A. Yes, sir. Yes, sir.  
 22 Q. -- you talk about the actual design  
 23 pressure of the windows. Were you able to learn  
 24 from someone who had first-hand knowledge of what  
 25 the actual design pressure of the windows that were

Page 191

1 used in the Carriage House property before Hurricane  
 2 Katrina was?  
 3 A. These old windows are DP20s. Those were  
 4 the standard builder grade window back in the early  
 5 '70s. Just like today the standard builder grade  
 6 window today is a DP30.  
 7 Q. Are any of those standard DP20s still in  
 8 place?  
 9 A. Yes, sir.  
 10 Q. So you were able to inspect when you went  
 11 to the property and see that's a DP20 window?  
 12 A. Yes, sir.  
 13 Q. How were you able to determine what kind  
 14 of --  
 15 A. Well, if you buy enough of them, you know  
 16 what you're looking at.  
 17 Q. Throughout your report, you used the terms  
 18 repair, and I believe, you know, renovate or  
 19 restore, and perhaps we've used those terms in the  
 20 deposition today. Do you have any -- admit any  
 21 effort to separate what items of repairs were  
 22 actually upgraded from the existing materials when  
 23 Greg Stewart's company repaired the Carriage House  
 24 property?  
 25 A. Based upon the finishes that are in these

Page 192

1 places, he didn't upgrade anything. It's all base  
 2 grade. It's apartment grade work. It was apartment  
 3 grade work. It is now apartment grade work. He --  
 4 he really didn't build this to keep. He built  
 5 this -- rebuilt this to sell, and he didn't do all  
 6 of the work he should have did. He repainted some  
 7 walls that had mold on them. I stayed in this  
 8 property. I think I mentioned that to you. He --  
 9 he didn't even come close to repairing it correctly.  
 10 Q. You said you stayed overnight --  
 11 A. Yes, sir.  
 12 Q. -- in a unit?  
 13 A. Yes, sir.  
 14 Q. When did you do that?  
 15 A. I'm going to guess and say March 2007.  
 16 The public adjuster, Tammie Crossley, they had two  
 17 units over there that were allocated to them as some  
 18 sort of fee arrangement with Greg Stewart on work  
 19 they were doing together, and one of the public  
 20 adjusters was out of town when I was coming in, so  
 21 they let me bunk there as opposed to having to get a  
 22 hotel room.  
 23 Q. Okay. If you turn to page 6 of your  
 24 report, under point 13, you say, "It has been my  
 25 experience while working Katrina claims that

Page 193

1 Nationwide unit rates may be from a special database  
 2 that they have created." Did I read that correctly?  
 3 A. Yes, sir.  
 4 Q. Can you tell me the basis for your  
 5 assertion there?  
 6 A. Well, the cost codes that are built into  
 7 Xactimate, the first four letters would be MSGU,  
 8 which is Mississippi, Gulfport, and then there would  
 9 be a 5 indicating 2005. Nationwide has a stock  
 10 database for Gulfport and a number of the carriers  
 11 have had special databases created for them. These  
 12 have shown up in more than one instance. This is  
 13 not a revelation of any sort. This -- many times a  
 14 carrier will have a special database for their  
 15 purposes and sometimes it doesn't match the  
 16 Xactimate numbers that were in the stock database.  
 17 Q. Do you have any basis for comparing the  
 18 two sets of numbers that you believe exist, that is  
 19 the Xactimate stock numbers and the Nationwide  
 20 especially created numbers, to determine which set  
 21 is more accurate?  
 22 A. I had Todd Skinner analyze the two, and  
 23 he's, in fact, working up a major report on the  
 24 differences between the stock Xactimate numbers  
 25 versus the numbers that Nationwide was using. When

49 (Pages 190 to 193)

Lewis Edward O'leary, Jr. 10/6/2009

Page 194

1 I mentioned 73 cents a square foot for carpet  
2 earlier versus something like \$1.84 a square foot, I  
3 was comparing the Nationwide number to the stock  
4 number.

5 Q. Well, I understand that you're saying that  
6 the stock numbers and the Nationwide numbers are  
7 different.

8 A. Yes, sir.

9 Q. My question is have you undertaken an  
10 evaluation to determine which two sets of numbers  
11 most closely match the actual prices for the  
12 repairs?

13 A. No, sir, I have not compared them to the  
14 repairs. I consider the repairs, to a large degree,  
15 done out there as inferior. I think he was strictly  
16 rebuilding the thing for sale so...

17 Q. Let me -- I asked a bad question, and I  
18 understand your point on the actual repairs. My  
19 question, what I meant to ask was have you  
20 undertaken a comparison of the stock Xactimate  
21 numbers and the Nationwide numbers to determine  
22 which of those sets most closely approximates actual  
23 construction costs on the Mississippi Gulf Coast?

24 A. I'm not sure why I would -- I have done  
25 that. I've compared stock Xactimate numbers to what

Page 195

1 local contractors are charging out there and found  
2 variances where Xactimate is low by an average of  
3 30 percent in certain types of finishes. It's  
4 called a storm index where contractors charge full  
5 or retail and Xactimate doesn't pick up on that or  
6 base charges where a contractor has to come out two  
7 or three times for a particular item such as taping  
8 and floating, which is a three-day process. If you  
9 don't have the base charge index in there, which  
10 Nationwide's estimate didn't have, it can make a  
11 significant difference in the total and value of the  
12 estimate.

13 Q. Do you have any actual quotes from  
14 contractors on the Gulf Coast as to unit prices for  
15 any of the items of damages that you've built into  
16 your Xactimate estimates for the Carriage House  
17 property?

18 A. What we used was Xactimate stock numbers  
19 comparing Xactimate stock numbers knowing their load  
20 to the Nationwide numbers, which in many cases was  
21 even lower by a substantial margin.

22 Q. I understand that comparison. My question  
23 was different. Have you gotten actual quotes of --  
24 from contractors on the Mississippi Gulf Coast to  
25 compare those quotes on unit prices to the prices

Page 196

1 that you have in your Xactimate reports?

2 A. I -- I have not done that formally as of  
3 this point on this project.

4 Q. Now, number 14, you say, "The program used  
5 by Nationwide includes in the database such extra  
6 steps as move, cover and protect contents, detach  
7 and reset A/C return and supply rules, remove and  
8 reset curtains or drapes or mini-blinds and  
9 hardware." Did I read all of that correctly?

10 A. Yes, sir.

11 Q. I think we talked a little bit about that  
12 these are various selections that the Xactimate  
13 program allows an estimator to choose, correct?

14 A. Yes, sir.

15 Q. Do you have any understanding whether any  
16 of these items that you've listed here are typically  
17 included in contract quotes without being  
18 specifically broken out as a line item?

19 A. In a normal Xactimate (unintelligible) I  
20 could mention several other programs, these are  
21 normal items that are listed in each area of  
22 repairs. It's almost always going to be an A/C  
23 grill in a room, and it is normal to list either  
24 remove and reset or to remove and replace. It's  
25 actually easier to remove and reset than it is to

Page 197

1 tape it off.

2 Q. Well, if the contractor provides a quote  
3 to replace the drywall, it's just a single item, say  
4 replace drywall in one room, \$1,000.

5 A. Okay.

6 Q. In your experience, is that going to  
7 include detaching and resetting the A/C return and  
8 supply even if the quote that contractor provides  
9 doesn't specifically break out that line?

10 A. The contract -- the Sheetrock contractors  
11 normally are going to give you a quote on a bare  
12 wall configuration. There ain't going to be any A/C  
13 grills in place. There ain't going to be any  
14 baseboards in place. A Sheetrock contractor is  
15 normally not a demo contractor. If you get a price  
16 for \$1,000 for a man to come in and put up Sheetrock  
17 for you, tape and float it, ready for painting,  
18 you're going to have the place ready for him to come  
19 in with Sheetrock boards and install them, and then  
20 tape and float, and he's not going to be worried  
21 about A/C grills because they're not there at that  
22 time.

23 Q. Well, I guess my question is if you -- the  
24 \$1,000 is just a made up number --

25 A. Of course.

50 (Pages 194 to 197)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 198</p> <p>1 Q. -- for purposes of this question.</p> <p>2 A. Of course.</p> <p>3 Q. My question really is if a contractor --</p> <p>4 if you ask a contractor to replace the drywall on a</p> <p>5 wall, that wall has an A/C vent, and he gives you a</p> <p>6 quote for a certain amount of money --</p> <p>7 A. I apologize for that. Please allow me to</p> <p>8 turn it off.</p> <p>9 MR. GILMORE: Go off the record.</p> <p>10 VIDEOGRAPHER: Off the record at 3:40.</p> <p>11 (Off the record.)</p> <p>12 VIDEOGRAPHER: On the record at 3:40.</p> <p>13 Q. (By Mr. Gilmore) When you get a quote</p> <p>14 from a contractor to perform replacement such as</p> <p>15 replacing drywall ---</p> <p>16 A. Yes, sir.</p> <p>17 Q. -- is every single step necessary to do</p> <p>18 that job properly going to be broken out as a line</p> <p>19 item as a matter of normal contracting practice?</p> <p>20 A. As a matter of a normal contractor having</p> <p>21 nothing to do with Xactimate or any of the other</p> <p>22 programs, they will not normally quote a job like</p> <p>23 this. They will quote it by the board. If they</p> <p>24 have to bring in 20 boards, they're going to charge</p> <p>25 you for 20 boards. If there's two boards left on</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Well, this paragraph here offers your</p> <p>2 opinion as to the burden a carrier bears to proving</p> <p>3 that coverage is not provided for a portion of</p> <p>4 damage, right?</p> <p>5 A. That is part of my conclusions, yes, sir.</p> <p>6 Q. You would agree that which party bears the</p> <p>7 burden of proving coverage or exclusion of coverage,</p> <p>8 that's a legal question, right?</p> <p>9 A. I believe that would probably fall under</p> <p>10 your category, yes, sir.</p> <p>11 Q. Now, you finished this paragraph by</p> <p>12 saying, "Absent proof that the finishes in question</p> <p>13 here were not destroyed by wind prior to the arrival</p> <p>14 of the flood waters, where special form coverage was</p> <p>15 involved, standard practice of the industry has been</p> <p>16 to afford these damages as wind damages. See tab</p> <p>17 10." Did I read that correctly?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That is your opinion as to the burden of</p> <p>20 proving excluded flood damage, correct?</p> <p>21 A. Proving -- I'm not exactly sure how to</p> <p>22 answer that question. If you word --</p> <p>23 Q. I will rephrase the question.</p> <p>24 A. All right.</p> <p>25 Q. That statement that you have here that</p>
<p style="text-align: right;">Page 199</p> <p>1 the floor, you paid for those two extra boards still</p> <p>2 on the floor. That's real world with regard to a</p> <p>3 Sheetrock contractor. In order to get a number up</p> <p>4 to the same level where you -- you're allowing</p> <p>5 enough money where somebody can pay that price, you</p> <p>6 have to include all of the bits and pieces or you're</p> <p>7 going to have an estimate that is not adequate to</p> <p>8 pay for the work to be done. The insurance industry</p> <p>9 chooses to build a number up one tiny piece at a</p> <p>10 time, whereas in the real world, it may be just a</p> <p>11 single number price per board, \$40 a board or</p> <p>12 something like that. When I say a board, I'm</p> <p>13 talking about a four-by-eight, four-by-10,</p> <p>14 four-by-12 sheet of Sheetrock.</p> <p>15 Q. Underneath point 14 on page 6 of your</p> <p>16 report --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- you have a paragraph, and the paragraph</p> <p>19 that begins, "This policy stipulates to the premise</p> <p>20 that it affords special form coverage."</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you discuss the -- your opinions on</p> <p>23 the burdens that a carrier has in proving exclusion</p> <p>24 of coverage; is that correct?</p> <p>25 A. I'm sorry, repeat that question.</p>	<p style="text-align: right;">Page 201</p> <p>1 absent proof that damage was caused by flooding,</p> <p>2 it's the standard practice of the industry to afford</p> <p>3 these damages as wind damages, that's an assertion</p> <p>4 that has informed your approach to determine --</p> <p>5 making cause and origin determinations and estimates</p> <p>6 of damages in your report, correct?</p> <p>7 A. I -- I was asked to try to come up with a</p> <p>8 number for the wind damages, and in an effort to</p> <p>9 come up with that, I had to arrive at certain</p> <p>10 conclusions throughout the entire process, and in</p> <p>11 areas where it could have just as easily have been</p> <p>12 wind as opposed to water, I made certain decisions</p> <p>13 to call it wind damage and provided an explanation</p> <p>14 in terms of what my mind set was and what authority</p> <p>15 I was drawing from to reach that mind set.</p> <p>16 Q. And my question is one of the authorities</p> <p>17 that you're deriving on -- you are deriving those</p> <p>18 decisions from was your understanding of what a</p> <p>19 standard practice of the industry has been as you</p> <p>20 articulate in this last statement --</p> <p>21 A. I pulled it from Insurance Institute of</p> <p>22 America training manual. I believe it was the</p> <p>23 claims environment.</p> <p>24 Q. The next heading underneath "Conclusions"</p> <p>25 on page 6 of your report that's entitled</p>

51 (Pages 198 to 201)

Lewis Edward O'leary, Jr. 10/6/2009

Page 202

1 "Postscript," and the first bullet point in that  
2 heading says, "It is an accepted practice of the  
3 industry to recreate the loss with incomplete  
4 evidence to work from." Did I read that correctly?

5 A. Yes, sir.

6 Q. You would agree that the most important  
7 evidence is visual evidence from inspection of the  
8 property damage, right?

9 A. The best evidence you can have to work  
10 with is the physical damage itself.

11 Q. The next bullet point would be -- you say,  
12 "My compensation for this assignment has been the  
13 payment of \$200 per hour for actual consulting and  
14 \$100 per hour for my travel time. Secretarial is  
15 \$35 per hour and expenses are billed at cost." Did  
16 I read that correctly?

17 A. Yes, sir.

18 Q. How many actual consulting hours have you  
19 spent in connection with the Carriage House work?

20 A. I don't know. I could certainly find out,  
21 but at this moment, I can't tell you.

22 Q. Can you give a ballpark estimate? Would  
23 it be more than 20 hours?

24 A. Yes, sir.

25 Q. More than 100 hours?

Page 203

1 A. Yes, sir.

2 Q. More than 200 hours?

3 A. Yes, sir.

4 Q. More than 500 hours?

5 A. I don't think so.

6 Q. Somewhere between 200 and 500 hours?

7 A. In that -- yes.

8 Q. And is it closer to 200 or 300 or is it  
9 closer to 400 or 500?

10 A. Now, you've got me. I -- I can't go  
11 there.

12 Q. Now, that's for actual consulting. How  
13 about just pure travel time, how many hours have you  
14 spent traveling in connection with your work at the  
15 Carriage House property?

16 A. Normally, I don't go on a trip just for  
17 one customer. This particular trip is an exception  
18 to that rule. I say that as a rule one out of every  
19 15 or 20 trips I make is for one customer only.

20 Q. Well, in terms of the actual travel time,  
21 however you've allotted it among your various  
22 customers, but the travel time you've billed to  
23 Sunquest for the Carriage House property, can you  
24 give me an estimate of how many hours that would be?

25 A. I wish I could. You know, obviously, I

Page 204

1 have an accounting staff that can come up with what  
2 I've billed for this assignment.

3 Q. Well, I assume you had him -- you pointed  
4 to my colleague suggesting that we should send a  
5 request for some writing that you might have that  
6 might show this. Have you submitted invoices for  
7 your work?

8 A. Yes, sir, I have.

9 Q. And do you still have copies of all of  
10 those invoices?

11 A. I certainly can -- can come up with how  
12 many hours for travel time, how much for travel  
13 expenses, how many hours for consulting. I -- I can  
14 give you a -- a total summary on everything.

15 Q. You know, the actual invoice, copies of  
16 the actual invoice or a summary, whatever is more  
17 convenient for you, but I would appreciate that.

18 A. I will just tell the girls to take care of  
19 it and get it to y'all once -- once this little  
20 shopping list comes in.

21 MR. GILMORE: Let's go off the record for  
22 a quick break.

23 VIDEOGRAPHER: Off the record at 3:49.

24 (Off the record.)

25 VIDEOGRAPHER: Beginning tape six. On the

Page 205

1 record at 4:00 o'clock.

2 Q. (By Mr. Gilmore) Mr. O'Leary, I'm going  
3 to show you and ask you some questions about a few  
4 of the estimates for certain buildings at the  
5 Carriage House property. We're not going to go  
6 through all 17 of them, but just some questions  
7 about several of these.

8 (Exhibit 187 marked for identification.)

9 Q. (By Mr. Gilmore) I've handed you what's  
10 marked as Defense Exhibit 187, and you recognize  
11 this as your Xactimate estimate for Building Number  
12 4 at the Carriage House property?

13 A. Yes, sir.

14 Q. Turn to page 2, you'll see an estimate for  
15 general demolition.

16 A. No reflection.

17 Q. Take your time and clear your voice. Do  
18 you need some more water?

19 A. Thank you, sir.

20 Q. So as I was saying, on page 2 of your  
21 Xactimate estimate for Building 4, you have a line  
22 item of 16 hours for general demolition, line item  
23 of four hours for hauling debris and three dumpster  
24 loads?

25 A. Yes, sir.

52 (Pages 202 to 205)

Lewis Edward O'leary, Jr. 10/6/2009

Page 206

1 Q. And that -- your estimate, therefore, is  
2 that it would take 16 man hours and four truckloads  
3 to haul seven to eight tons of debris from just this  
4 one building?

5 A. Where's the rest of this estimate? It  
6 starts with item number 14. Where's the rest of it?

7 Q. Well, this is how it was produced to us.  
8 As you can see, it is number 2. Page 1 is the cover  
9 page.

10 A. Yes, sir.

11 Q. All of the line items have various numbers  
12 listed on them, but they are not, as you noticed,  
13 consecutively numbered from 1 going forward. Can  
14 you explain the numbering system for the line items?

15 A. Not off the top of my head, but we've got  
16 those estimates over there. I think we've got the  
17 full estimates in those notebooks over there. Maybe  
18 I can figure out what the deal is by looking at  
19 those notebooks.

20 Q. Well, when you say you have the full  
21 estimates in the notebooks behind you, I'm just  
22 trying to figure out what you mean by that. These  
23 were the estimates that were produced to us.

24 A. The same computer -- they have a travel  
25 stick here, a two gig travel stick that had my

Page 207

1 report and all of my attachments to it on the travel  
2 stick, and I believe they somehow gave y'all a copy  
3 of that. Whether it was another travel stick or  
4 hard copies, I don't know between the two law firms  
5 how you got what you got.

6 MR. BROWN: Well, let's put it this way.

7 MR. GILMORE: Can we go off the record for  
8 a second?

9 VIDEOGRAPHER: Off the record at 4:04.  
10 (Off the record.)

11 VIDEOGRAPHER: On the record at 4:05.

12 Q. (By Mr. Gilmore) Okay. So, Mr. O'Leary,  
13 we're looking at Defense Exhibit 187, which is your  
14 Xactimate estimate for Building 4 at the Sunquest  
15 Carriage House property?

16 A. Yes, sir.

17 Q. Page 2, we just looked at. It starts with  
18 items 14, 15 and 13, which deal with demolition and  
19 hauling debris; is that correct?

20 A. Yes, sir.

21 Q. And you estimate that it would have taken  
22 16 man hours and four truckloads for wind-related  
23 debris for this one building; is that correct?

24 A. That's what it says.

25 Q. That doesn't include interior demolition

Page 208

1 and debris hauling, it's just for the exterior?

2 A. No, sir. On item 1, it's showing unit 19  
3 ahead of this. This is a miscellaneous/temporary  
4 category that applies to Building 4. It doesn't  
5 apply to one particular apartment. It applies in  
6 general to the building. Otherwise, it would have a  
7 designator on it at the beginning of each section  
8 whether it's a general category or a unit category.

9 Q. I think I might have used the term unit  
10 incorrectly. This -- but I think my question was --  
11 and if you can clarify -- lines 14 through -- 14, 15  
12 and 13 are for debris hauling for the overall  
13 exterior of Building 4; is that correct?

14 A. This doesn't say exterior. This says this  
15 is a miscellaneous/temporary category suggesting it  
16 applies to the whole building.

17 Q. Interior and exterior?

18 A. That's what it suggests.

19 Q. Now, this hauling of debris estimate, have  
20 you made any effort to segregate out debris that  
21 would have been damaged from storm surge?

22 A. I believe this is our attempt to define  
23 the portion that would be wind related.

24 Q. So it is your belief that there would have  
25 been even more debris beyond what you have provided

Page 209

1 an estimate for here, but some portion of that  
2 additional debris would have been caused by the  
3 storm surge flood damage?

4 A. Yes, sir.

5 Q. And that's not reflected in the estimate?

6 A. That's correct.

7 Q. Still working on page 2, you have line  
8 items for temporary construction office, portable  
9 trailer and temporary power usage per month,  
10 commercial and temporary power hookup, temporary  
11 toilet and temporary water usage. Those are items  
12 17, 19, 20, 21 and 22, correct?

13 A. Yes -- yes, sir.

14 Q. Now, have you made any effort to determine  
15 how long it took for power to be restored at the  
16 Carriage House property after Hurricane Katrina?

17 A. I was told that it was approximately two  
18 weeks.

19 Q. You have .75 months. Is that supposed to  
20 be --

21 A. Three weeks.

22 Q. -- three weeks? Temporary power hookup,  
23 you have one each. What is that unit measuring?

24 A. It is a specific service. You put up a T  
25 pole, they bring power to your T pole, and you hook

53 (Pages 206 to 209)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 210</p> <p>1 up your T pole to whatever.</p> <p>2 Q. How long did it take for water and sewer</p> <p>3 utilities to be restored to the Carriage House</p> <p>4 property?</p> <p>5 A. I don't recall. I'm not even sure I know.</p> <p>6 Q. Do you know if Greg Stewart's company had</p> <p>7 a trailer or other sort of temporary construction</p> <p>8 office on-site during the repairs of the Carriage</p> <p>9 House property?</p> <p>10 A. I don't remember asking him about this.</p> <p>11 Jerry may have asked him about it, but these are</p> <p>12 classic things that you would normally allow for</p> <p>13 this type of job had it of been the insured as</p> <p>14 opposed to Greg Stewart.</p> <p>15 Q. Now, you have a line item, line 9, 4,981</p> <p>16 still on page 2.</p> <p>17 A. Yes, sir.</p> <p>18 Q. That's entitled "structure drying."</p> <p>19 A. Yes, sir.</p> <p>20 Q. And the figure there is \$12,306 --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. What does the structure drying item</p> <p>25 entail?</p>	<p style="text-align: right;">Page 212</p> <p>1 version of racking damage to windows.</p> <p>2 Q. Did you see any of that --</p> <p>3 A. I wasn't --</p> <p>4 Q. -- actually occur?</p> <p>5 A. I wasn't there sir.</p> <p>6 Q. Well, in any of the photographs that show</p> <p>7 the pre-repair state of the property, did you see</p> <p>8 any wetted wood framing that became racked and</p> <p>9 twisted?</p> <p>10 A. This is personal experience. When a</p> <p>11 framing job takes too long, and you let the elements</p> <p>12 get the frame wet too much, as part of the framing</p> <p>13 is hanging windows, and if you don't dry it out</p> <p>14 before you start putting in insulation and</p> <p>15 Sheetrock, you're going to lose some windows. A</p> <p>16 two-by-four that's naturally straight when it's</p> <p>17 delivered to you can get awfully crooked if it gets</p> <p>18 too wet and stays too wet.</p> <p>19 Q. Did you see any photographs that showed</p> <p>20 that?</p> <p>21 A. No, sir.</p> <p>22 Q. Page 3.</p> <p>23 A. Yes, sir.</p> <p>24 Q. Item 25, you have laminated, 50 year</p> <p>25 composite shingle roofing including felt.</p>
<p style="text-align: right;">Page 211</p> <p>1 A. With all of the loss of roofing and loss</p> <p>2 of Sheetrock ceilings, you had a pretty wet</p> <p>3 structure sitting there, not counting the stuff that</p> <p>4 was below the flood line. You would normally want</p> <p>5 to dry it out before you enclosed it again.</p> <p>6 Q. Do you think there was more total moisture</p> <p>7 that required drying in the building as a result of</p> <p>8 the storm surge flooding or as a result of the total</p> <p>9 rainwater that seeped in through the roof or through</p> <p>10 failed seals around windows and sliding doors?</p> <p>11 A. There was certainly more gallons of water</p> <p>12 delivered to the ground floor of this property by</p> <p>13 the flood than by wind if you're going to look at it</p> <p>14 in terms of raw gallons of water.</p> <p>15 Q. When you say structure drying, portions</p> <p>16 that were already wet such as the drywall you would</p> <p>17 already be replacing, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. When that -- I guess my question is what</p> <p>20 then is it that you say requires drying if wetted</p> <p>21 drywall on the ceilings and walls are to be replaced</p> <p>22 are on the floors, too?</p> <p>23 A. You leave framing lumber wet long enough,</p> <p>24 and it will twist and curl on you and destroy every</p> <p>25 window in the property. It will create its own</p>	<p style="text-align: right;">Page 213</p> <p>1 A. Yes, sir.</p> <p>2 Q. The existing shingles that were shingle</p> <p>3 roofing that was on the roof before Hurricane</p> <p>4 Katrina was likely a 20, 25 year?</p> <p>5 A. 25 year three tab.</p> <p>6 Q. How much more expensive is installing a 50</p> <p>7 year roofing compared to 25 -- 20 or 25 year?</p> <p>8 A. I'm going to guess and say about \$80 a</p> <p>9 square.</p> <p>10 Q. \$80 a square foot more?</p> <p>11 A. Yes, sir, per -- per square when it's 100</p> <p>12 square feet.</p> <p>13 Q. Now, you have line item 24 on page 3 is</p> <p>14 tear off, haul and dispose of composite shingles.</p> <p>15 That's basically the demolition and hauling away of</p> <p>16 the roof debris, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And do you know whether that specific line</p> <p>19 item for the demolition and hauling away of roof</p> <p>20 debris, how that is broken out from the line item on</p> <p>21 page 2 for general demolition for the overall</p> <p>22 building?</p> <p>23 A. As a rule, because a roof itself will</p> <p>24 consume at least a dumpster all by itself, the tear</p> <p>25 off and haul off of roof shingles is normally a line</p>

54 (Pages 210 to 213)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 214</p> <p>1 item separate and apart from the general demolition.  2 Not always, but as a rule it is.  3 Q. Well, did you confirm in the Xactimate  4 report that that is actually how this report that  5 Mr. Wiggins generated in the program is --  6 A. This -- this is an Xactimate estimate.  7 Q. So it's your belief that the demolition  8 charges for the roof is not separately included in  9 the demolition and debris hauling on page 2?  10 A. Understand this program can be manipulated  11 to the user's discretion. You can use a single  12 value for a roof. You can come in and say three tab  13 roof, \$220 a square, single line item, and that can  14 include steep pitch charge, two-story charge,  15 plumbing vents and jacks, everything. I can't  16 believe I did it twice in a row.  17 MR. GILMORE: Go off the record.  18 A. My apologies.  19 Q. (By Mr. Gilmore) That's fine. We're  20 still on the record. Turn to page 4. If you look  21 at line item 648, it's about halfway down --  22 A. Yes, sir.  23 Q. -- "scaffolding per section, 22 five foot  24 sections for three-quarters of a month." Did I read  25 that --</p>	<p style="text-align: right;">Page 216</p> <p>1 down and rehangng louvers on either side of the  2 window. Does this property have louvers on either  3 side of the window? I think it does. We can look  4 at the photographs. Hanging gutters, I believe this  5 property had gutters on it, and it needed new  6 gutters on it when we were done. You know, all of  7 the crafts use the same set of scaffolding is what  8 I'm telling you.  9 Q. Turn to page 5. This is the kitchen of  10 unit 19 in Building 4.  11 A. Yes, sir.  12 Q. You have a line item for paint the walls  13 and the ceiling, correct? It's, I think, line items  14 463 through 466.  15 A. Yes, sir.  16 Q. I'm going to show you what we've marked as  17 Defense Exhibit 237.  18 (Exhibit 237 marked for identification.)  19 Q. (By Mr. Gilmore) These have Bates numbers  20 on them, if you can turn to page 5960 and 5961. I'm  21 sorry, if you flip back a few pages to 5954, you  22 will see a photograph of the door that says 19.  23 A. 59 what?  24 Q. 5954.  25 A. Okay.</p>
<p style="text-align: right;">Page 215</p> <p>1 A. Yes, sir.  2 Q. You would need 22 five foot sections for  3 three weeks just to perform the repairs on a single  4 building?  5 A. If memory serves me correctly, this  6 building has got a front and a back, and if you  7 build a section of scaffolding, and you do some work  8 and you tear it down, and you take it back around to  9 the other side, then each side only counts for half  10 of that. In other words, these five -- these  11 sections we're describing here is just for one side  12 of the building. It doesn't wrap the whole  13 building. Rather than buying enough scaffolding to  14 go on both the front and back, you build what you  15 need on the front, you use it, you tear it down, you  16 move it to the back, you use it, you tear it down,  17 and you take it back. They charge you portal to  18 portal.  19 Q. And that's required to paint and clean  20 stucco?  21 A. I'll sit here and study this if you'd like  22 me to in terms of everything that scaffolding might  23 be needed for. I -- you know, I'm not prepared to  24 sit here and tell you that that's all we were doing  25 on this particular building. We might be taking</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. The photographs that follow show interior  2 photographs for this unit, correct?  3 A. Yes, sir.  4 Q. So if you turn to 5960 and 5961, it shows  5 the kitchen in unit 19, correct?  6 A. Yes, sir.  7 Q. Now, you see a visible water line with  8 mold growing on it from the storm surge inundation  9 about up to the level of the countertop in these  10 photographs, correct?  11 A. Yes, sir.  12 Q. And these photographs don't show any other  13 signs of water staining or damage to drywall above  14 that water line, do they?  15 A. Some of the strangest looking coloration  16 in the background here. I mean, wall -- walls and  17 windows don't look traditionally like this. I'm not  18 sure what's going on here with the color of this  19 picture. I could have all kinds of stains coming  20 from above, and you couldn't tell it with this type  21 of coloration. I mean, neither water nor wind makes  22 this type of coloration on a wall.  23 Q. That's -- you're talking about the  24 pixelation because it's a digital photograph, the --  25 A. It's one of the most distorted color</p>

55 (Pages 214 to 217)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 218</p> <p>1 pictures I've seen in a while. I mean, this wall in 2 all likelihood is not four different shades. 3 Q. You would agree -- if you could hold up 4 page 5960 for the camera, Mr. O'Leary. 5 A. (Witness complies.) 6 Q. And you would agree that the cabinets, the 7 upper cabinets there don't appear to show any damage 8 of any kind, do they? 9 A. In this picture, I don't see any evidence 10 of damage to these upper cabinets. When was this 11 picture taken? 12 Q. Similarly the blinds, the Venetian blind 13 in the window is still there, right? 14 A. Yes, sir. 15 Q. The only mold shown growing in this 16 photograph on the next photograph on 5961 are below 17 the water line where the storm surge flooding 18 inundated the property, right? 19 A. Yes. 20 Q. Now, if you turn to page 6 of your report, 21 going back to the report for Building 4, Defense 22 Exhibit 187. 23 A. Do you want me to leave these separated 24 out? 25 Q. Just leave them -- you can leave them</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Selecting high grade makes the repair 2 costs pricier, right? 3 A. If you're replacing cabinets with solid 4 wood cabinets, you're going to pay more than for 5 pressed board. 6 Q. Do you recall inspecting the cabinets and 7 being able to determine if they were made of pressed 8 board versus solid wood? 9 A. I can look at that cabinet door and tell 10 that's solid wood. I have the ability to do that, 11 and I can also tell these photographs were taken 12 very shortly after the storm, which doesn't include 13 any consideration of the fact these roofs were 14 unattended for months. That kitchen could be an 15 absolute abomination by the time March '06 rolls 16 around. I mean, this is right after the storm. 17 This is September '05, and this is not the condition 18 that these were in by March of '06, especially 19 without roofs in place. 20 Q. Before we just showed you these 21 photographs, had you ever actually seen a photograph 22 of the interior of the kitchen in unit 19 of 23 Building 4 as it looked right after the storm? 24 A. No. 25 Q. Okay. Okay. Still working on your</p>
<p style="text-align: right;">Page 219</p> <p>1 right there for right now. 2 A. Go ahead. You're on 6? 3 Q. Yeah, page 6 under line item 2077, you 4 have line items to replace the cabinetry, upper 5 (wall) units - high grade. That's what that line 6 item says, right? 7 A. Yes, sir. 8 Q. And underneath that is line item 2078, 9 cabinet knob or pull - high grade. 10 A. That's what it says. 11 Q. Your estimates for this kitchen in unit 19 12 of Building 4 have the replacement of the cabinetry 13 in the upper wall in the kitchen, correct? 14 A. That's what this estimate says, yes. 15 Q. And not only do they replace those 16 cabinets, which we saw were not damaged in the 17 photographs we looked at a moment ago, but they 18 replaced them with high grade cabinetry, right, 19 according to your Xactimate estimate here? 20 A. These appear to be solid wood cabinets. 21 In the vernacular, when you have solid wood 22 cabinets, and you go into the Xactimate program, the 23 closest equivalent normally would be high grade 24 because they're solid wood, and that's what this 25 suggests to me, that they're solid wood.</p>	<p style="text-align: right;">Page 221</p> <p>1 Xactimate report for Building 4, Defense 2 Exhibit 187, if you look at pages 7 and 8 -- 3 A. Yes, sir. 4 Q. -- you have basically replacing and 5 painting the ceiling -- walls and ceilings; isn't 6 that correct? 7 A. Which line item would you be referring to, 8 sir? 9 Q. Well, kind of all of the line items for -- 10 I guess it's the subroom 1 and the closets and the 11 entry foyer for this unit under the -- at the top of 12 page 7, you have, you know, drywall to be hung. A 13 little bit below that, you have painting. 14 A. Yes, sir. 15 Q. The next page you have -- similarly, you 16 have walls and the ceiling being hung with drywall 17 and repainted, correct? 18 A. Yes, sir. 19 Q. And this is for the entry and foyer in the 20 unit 1 -- unit 19, correct? 21 A. Closet, subroom 1 and foyer entry, yes, 22 sir. 23 Q. Now, still looking at Defense Exhibit 237, 24 which are the photographs you have in front of you, 25 if you can turn to 5955 through 5956.</p>

56 (Pages 218 to 221)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 222</p> <p>1 A. 5955 and 5956, yes, sir, I have them in 2 front of me. 3 Q. And these show the entry/foyer for unit 4 19, right? 5 A. Yes, sir. 6 Q. Now, you've got photographs that show a 7 visible water line from the storm surge flooding as 8 well as a fair amount of mold added below that water 9 line, correct? 10 A. Yes, sir. 11 Q. They don't show any obvious stains or 12 collapsed drywalling on the walls in these two 13 photographs in the entry foyer for this unit, right? 14 A. There's some evidence around the light in 15 the entry. It may just be a reflection, but the 16 lighting is so poor here, it's impossible to tell 17 whether that's a water stain or what. There's 18 certainly a difference in finish there which could 19 be reflected by wetness. 20 Q. It wouldn't be surprising if the walls and 21 ceiling in this area were intact and did not need 22 repair right after the storm, correct, based on the 23 photos that we see? 24 A. Immediately after the storm, they appear 25 to be -- not all of them, of course. Some of them</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. And these are, as we discussed earlier, 2 very important pieces of information to prepare 3 estimates of damage? 4 A. Absolutely. 5 Q. And you will see in this photograph of the 6 bathroom, there is a mirror still attached to the 7 wall and it's not broken or it hasn't fallen off of 8 the wall, correct? 9 A. It appears to be intact. 10 Q. You see in the bottom corner, there is 11 mold growing up the wall to approximately where the 12 water line from the flooding would have been, right? 13 A. That -- that does appear to be the case, 14 yes, sir. 15 Q. No other mold visible anywhere above that 16 water line in this photograph, right? 17 A. No, sir. 18 Q. If you turn to the next page, you will see 19 another room, 5963. I'm sorry, next page of the 20 photographs, Defense Exhibit 237, you see a picture 21 of a room with the mold growing up to approximately 22 where the water line would have been, correct? 23 A. Yes, sir. 24 Q. There's a very clear dividing line between 25 mold and no mold?</p>
<p style="text-align: right;">Page 223</p> <p>1 appear to be in reasonably decent condition. 2 Judging from how much the verticals have been blown 3 about on the sliding doors, it would suggest that a 4 certain amount of water was blown in around those 5 doors. Those verticals probably didn't get that 6 badly out of shape on their own. That's the 7 configuration I would expect to see if water was 8 blowing in around those sliding doors, but clearly 9 that doesn't represent anywhere near the volume of 10 water that flooding would have represented. 11 Q. Now, if you turn to page 9 in Building 4. 12 A. Yes, sir. 13 Q. And this is in the bathroom in unit 19. 14 A. Yes, sir. 15 Q. Towards the bottom, you have replacing 16 quarter inch plateglass mirror, correct? 17 A. That's what it says, yes, sir. 18 Q. Now, if you turn to 5962, you'll see a 19 picture of the bathroom in the unit, correct? 20 A. Yes, sir. I -- you're telling me this is 21 unit 19. I'm going to have to take your word for 22 it. I have no way of knowing. 23 Q. In fact, before today, you had never seen 24 any of these photographs? 25 A. That is correct.</p>	<p style="text-align: right;">Page 225</p> <p>1 A. Yes, sir. 2 Q. Can you hold that up for the camera, Mr. 3 O'Leary? 4 A. (Witness complies.) 5 Q. Right about where the handlebars of that 6 bicycle are, the mold is growing below that and not 7 above that, right? 8 A. Yes, sir. 9 Q. Now, if you turn to pages 10 and 11 of 10 your report for Building 4 in Defense Exhibit 187. 11 A. 10 and 11, all right. 12 Q. And those are estimates of repairs for the 13 dining room and living room, correct? 14 A. Yes, sir. 15 Q. It's \$1,295.17 for the dining room and 16 \$3,234.62 for the living room, right? 17 A. I believe that's correct. 18 Q. And among the repairs that are included 19 for both are repairing drywall, reapplying popcorn 20 texture to the ceiling and repaint the walls and 21 ceilings, correct? 22 A. Yes, sir. 23 Q. Now, if you turn to -- going back to the 24 photographs then, 5964 through 5969, there's a 25 series of photographs, right, that show the living</p>

57 (Pages 222 to 225)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 226</p> <p>1 room and dining room?</p> <p>2 A. Yes, sir.</p> <p>3 Q. In these photographs here, there is again</p> <p>4 a visible water line from storm surge with mold</p> <p>5 growing on it at and below that line. No visible</p> <p>6 damage from the walls and ceilings above that water</p> <p>7 line, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Going back to your report for Building 4,</p> <p>10 Defense Exhibit 187.</p> <p>11 A. What page?</p> <p>12 Q. Page 26 through 28.</p> <p>13 A. Okay.</p> <p>14 Q. And this is in the section for unit 20.</p> <p>15 Now, if you -- sorry. If you go back to page 22,</p> <p>16 you'll see it starts for unit 20, correct?</p> <p>17 A. On page 20? Which page did you say at the</p> <p>18 beginning of this particular unit? Unit 20 on page</p> <p>19 22, yes.</p> <p>20 Q. Uh-huh (affirmative response). So then if</p> <p>21 you -- so we're -- beginning there, you have</p> <p>22 estimates for unit 20. On page 26 and 27, you have</p> <p>23 the dining room and then the living room, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And again, you have replacing drywall and</p>	<p style="text-align: right;">Page 228</p> <p>1 A. That's what it says, yes, sir.</p> <p>2 Q. Now, if you turn to page 5959 in these</p> <p>3 stack of photos in front of you.</p> <p>4 A. 5959.</p> <p>5 Q. Again, that's still within the stack of</p> <p>6 photographs for unit 19.</p> <p>7 A. 5959. All right.</p> <p>8 Q. Now, can you hold that photograph up?</p> <p>9 A. (Witness complies.)</p> <p>10 Q. From the appearance of that photograph, it</p> <p>11 would be hard to find \$2,400 in damage to this</p> <p>12 stairwell, it's fair to say?</p> <p>13 A. This is a closeup of the carpet going up</p> <p>14 the stairs. It's a poor quality picture, but I</p> <p>15 don't see any evidence based on the quality of the</p> <p>16 photograph of any water damage albeit flood or wind.</p> <p>17 Q. Now, I'm going to hand you a different</p> <p>18 report. I think there's a report for Building 1,</p> <p>19 which we have marked as Defense Exhibit 184.</p> <p>20 (Exhibit 184 marked for identification.)</p> <p>21 Q. (By Mr. Gilmore) Just put that in front</p> <p>22 of you right there.</p> <p>23 A. Same set of photographs?</p> <p>24 Q. And, actually, let me hand you a new set</p> <p>25 of photographs, Defense Exhibit 236.</p>
<p style="text-align: right;">Page 227</p> <p>1 repainting walls and ceilings for those rooms,</p> <p>2 correct?</p> <p>3 A. Okay.</p> <p>4 Q. Now, if you turn to -- we're going to go</p> <p>5 back in this big stack of photographs, turn to page</p> <p>6 5878, and that's the beginning of photographs for</p> <p>7 unit 20. You'll see the door with the number there,</p> <p>8 correct? It's 5878.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So if you then move ahead to 5900.</p> <p>11 A. 5900?</p> <p>12 Q. I'm sorry. I have you on the wrong --</p> <p>13 MR. GILMORE: Can we go off the record for</p> <p>14 a second and find the right page?</p> <p>15 VIDEOGRAPHER: Off the record at 4:42.</p> <p>16 (Off the record.)</p> <p>17 VIDEOGRAPHER: On the record at 4:49.</p> <p>18 Q. (By Mr. Gilmore) Mr. O'Leary, let's stay</p> <p>19 in unit 19. If you go back to page 14 of your</p> <p>20 report in Defense Exhibit 187.</p> <p>21 A. 14. Page 14, all right, sir.</p> <p>22 Q. And here you estimate \$2,433.67 to replace</p> <p>23 and repair the stairwell, including drywall,</p> <p>24 replacing carpets, painting all of those items,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 229</p> <p>1 (Exhibit 236 marked for identification.)</p> <p>2 Q. (By Mr. Gilmore) Just put it right in</p> <p>3 front of you.</p> <p>4 MR. GAUDET: Is that more pictures?</p> <p>5 Q. (By Mr. Gilmore) Now, let's look at your</p> <p>6 report for -- Xactimate report for Building 1 first.</p> <p>7 It's Defense Exhibit 184. If you'd turn to page 19</p> <p>8 of your report.</p> <p>9 A. Very good.</p> <p>10 Q. It's actually -- actually 18 and 19.</p> <p>11 A. All right.</p> <p>12 Q. Again show replacement for the stairwell.</p> <p>13 A. All right.</p> <p>14 Q. And this is in Building 1, unit 1 and that</p> <p>15 begins on page 5 from the report -- of your report,</p> <p>16 which is Defense Exhibit 184.</p> <p>17 A. Page 5?</p> <p>18 Q. That's unit 1. That continues on through</p> <p>19 19.</p> <p>20 A. All right. You want me to go to page 19?</p> <p>21 Q. Yes, please.</p> <p>22 A. All right. Very good.</p> <p>23 Q. And that's where you have an estimate of</p> <p>24 repairs for that stairwell of 2,000 -- of \$2,414,</p> <p>25 correct?</p>

58 (Pages 226 to 229)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 230</p> <p>1 A. Yes, sir.</p> <p>2 Q. \$2,414.72 to be exact, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Now, turn to the photographs in Defense</p> <p>5 Exhibit 236, and if you turn specifically to page</p> <p>6 5602, and you will see a picture of the door with</p> <p>7 unit 1 number on it, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Now, keep turning through these</p> <p>10 photographs of unit 1 until you get to page 5619.</p> <p>11 A. Yes, sir.</p> <p>12 Q. Can you hold that -- can you hold that</p> <p>13 picture up for the camera?</p> <p>14 A. (Witness complies.)</p> <p>15 Q. Now, that stairwell in unit 1 of Building</p> <p>16 well -- Building 1, obviously, it suffered</p> <p>17 significant damage, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Your estimate for repair for this</p> <p>20 stairwell is approximately the same as the stairwell</p> <p>21 in Building 4, unit 19; is that correct?</p> <p>22 A. Yes, sir. Yes, sir.</p> <p>23 Q. Now, going back to your report for</p> <p>24 Building 1, you can turn to page 29, which shows</p> <p>25 damages for unit 2 in the kitchen for Building 1.</p>	<p style="text-align: right;">Page 232</p> <p>1 A. Yes, sir.</p> <p>2 Q. Can you hold 5640 up?</p> <p>3 A. (Witness complies.)</p> <p>4 Q. And that's a photograph of the kitchen in</p> <p>5 unit 2, Building 1, correct?</p> <p>6 A. If you say so. There's nothing on here</p> <p>7 that tells me this is unit 2, but I assume there's a</p> <p>8 master index that does.</p> <p>9 Q. Well, working in the assumption that the</p> <p>10 photographs following each door with the unit number</p> <p>11 on it are associated with that building --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- you would agree that --</p> <p>14 A. This is probably the kitchen in unit 2.</p> <p>15 Q. And you would agree that this photograph</p> <p>16 on 5640 doesn't show any visible evidence that the</p> <p>17 cabinets -- the upper cabinets in the kitchen were</p> <p>18 damaged, though, right?</p> <p>19 A. At the time of this photograph.</p> <p>20 Q. Now, we've looked at your estimates for</p> <p>21 several of the units --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- in a couple of the buildings. From</p> <p>24 building to building, you and Mr. Wiggins took the</p> <p>25 same approach conceptually in generating the</p>
<p style="text-align: right;">Page 231</p> <p>1 Do you see that?</p> <p>2 A. Okay. This is the beginning of unit 2,</p> <p>3 okay, yes, sir. The page was marked CH1 so that</p> <p>4 threw me.</p> <p>5 Q. Right. I think the CH1 refers to Building</p> <p>6 1, so unit 2 of Building 1, and in the kitchen of</p> <p>7 unit 2 of Building 1, you have estimates for</p> <p>8 replacing all of the cabinets. If you look down at</p> <p>9 entry 2991, replacement cabinetry, upper wall units.</p> <p>10 A. Yes, sir.</p> <p>11 Q. "Remove cabinets and related components to</p> <p>12 access drywall replacement, replace due to damages</p> <p>13 caused by water from roof and removal."</p> <p>14 A. Yes, sir.</p> <p>15 Q. And similarly, you have detach and reset</p> <p>16 cabinetry for the lower units, right?</p> <p>17 A. That's what it says.</p> <p>18 Q. Now, if you turn back to the photographs</p> <p>19 in Defense Exhibit 236 --</p> <p>20 A. Yes, sir.</p> <p>21 Q. -- and turn to page 5635, you'll see a</p> <p>22 picture that shows unit 2 on it.</p> <p>23 A. Yes, sir.</p> <p>24 Q. And then keep flipping through the</p> <p>25 photographs in unit 2 until you get to page 5640.</p>	<p style="text-align: right;">Page 233</p> <p>1 Xactimate reports, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. You can put the photographs and your</p> <p>4 reports to the side.</p> <p>5 VIDEOGRAPHER: Do you want me to change</p> <p>6 the tape while he's getting --</p> <p>7 MR. GILMORE: Sure. Go ahead and change</p> <p>8 the tape. Off the record to change the tape.</p> <p>9 VIDEOGRAPHER: Off the record at 5:03.</p> <p>10 End of tape six.</p> <p>11 (Off the record.)</p> <p>12 VIDEOGRAPHER: Beginning tape seven. On</p> <p>13 the record at 5:04.</p> <p>14 Q. (By Mr. Gilmore) Mr. O'Leary, in 2001,</p> <p>15 you were indicted and convicted for uttering a</p> <p>16 forged endorsement --</p> <p>17 MR. BROWN: Objection to the form of the</p> <p>18 question. That's an improper question. There's no</p> <p>19 foundation for that conviction.</p> <p>20 MR. GILMORE: Counsel, please don't</p> <p>21 interrupt me until I finish my question, please, and</p> <p>22 put your objection on the record. I'll start over</p> <p>23 again.</p> <p>24 Q. (By Mr. Gilmore) In 2001, you were</p> <p>25 indicted and convicted at trial in North Carolina</p>

59 (Pages 230 to 233)

Lewis Edward O'leary, Jr. 10/6/2009

<p style="text-align: right;">Page 234</p> <p>1 for uttering a forged endorsement and obtaining 2 property by false pretenses. 3 A. That's incorrect. 4 Q. That conviction was reversed by the Court 5 of Appeals, right? 6 A. It's not a conviction until it's a final 7 conviction in my understanding. Now, I am not a 8 lawyer, you are, but I am told that it's not a 9 conviction until it's final. 10 Q. You were found guilty by a jury of your 11 peers at trial for the felony of uttering a forged 12 endorsement and obtaining property by false 13 pretenses. 14 MR. BROWN: I'm going to object and 15 instruct the witness not to answer that question. 16 He's not a lawyer, he can't argue with you. You 17 know what happened. The Court of Appeals reversed 18 it, and this is totally inappropriate. If you want 19 to ask him something about the case, that's fine, 20 but let's not quibble over convictions. You know 21 what the record says. 22 Q. (By Mr. Gilmore) Mr. O'Leary, you were 23 indicted for a felony in North Carolina, right? You 24 know what an indictment is? 25 A. Five years before the trial, yes, sir, I</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. And the check bore an endorsement from an 2 employee at the Gordons' mortgage company even 3 though she testified that she never actually signed 4 that check over? 5 A. Maxine Hall, SunTrust Savings. 6 Q. Now, it's fair to say that the Court of 7 Appeals reversed your conviction for uttering a 8 forged instrument because it found that the state 9 could not prove how the check was deposited in your 10 company's bank account, right? 11 A. The record speaks for itself. I will not 12 try to interpret what a Court of Appeals ruling 13 says. 14 Q. Let me hand you Defense Exhibit 258. 15 (Exhibit 258 marked for identification.) 16 MR. GILMORE: Let's go off the record for 17 a second. 18 VIDEOGRAPHER: Off the record at 5:09. 19 (Off the record.) 20 VIDEOGRAPHER: On the record at 5:11. 21 Q. (By Mr. Gilmore) If you turn to -- I've 22 handed you Defense Exhibit 258, which is the 23 reported decision of the Court of Appeals in your 24 case. Do you recognize that? 25 A. Yes, sir.</p>
<p style="text-align: right;">Page 235</p> <p>1 was indicted. 2 Q. You had done estimates for insureds, 3 property owners, correct? 4 A. At the time of that incident, I was 5 working virtually exclusively for carriers providing 6 estimates. 7 Q. Well, in this specific case, you did work 8 for -- 9 A. Joseph and Mary Gordon. 10 Q. -- Mr. and Mrs. Gordon. They had received 11 a payment from their insurer for about 52,000, 12 correct? 13 A. Yes, sir. 14 Q. And that check was made out to 15 Probuilders, which is your company, as well as the 16 Gordons and the Gordons' mortgage company, right? 17 A. That is correct. 18 Q. And that check ultimately found its way 19 into your company's bank account, right? 20 A. Actually, it was Stan Soble's company, 21 Probuilders, Incorporated. 22 Q. And you were the adjuster or consultant 23 who had been doing work for the Gordons, right? 24 A. I was the construction manager for 25 Probuilders, Incorporated on that project.</p>	<p style="text-align: right;">Page 237</p> <p>1 MR. BROWN: I'm again going to object to 2 the form of the question just because you said it 3 was reported, and it was unpublished so... 4 MR. GILMORE: Fair enough. 5 Q. (By Mr. Gilmore) Would you turn to page 4 6 of Defense Exhibit 258? 7 A. Yes. 8 Q. See the second to the last paragraph, and 9 the beginning of that paragraph, the Court of 10 Appeals wrote that, "There is evidence that someone 11 involved with the contract to repair the Gordons' 12 home forged Ms. Hall's endorsement and passed a 13 forged instrument for the sake of gain or with the 14 intent to defraud." Did I read that correctly? 15 A. I guess. 16 Q. And so therefore, it's fair to say that 17 your conviction was reversed because the state, even 18 though it had shown there was evidence that someone 19 in your company had forged the signature on the 20 check, that they couldn't prove that it had been 21 deposited in your company's account. Is that your 22 understanding of why you were -- 23 A. No, that's totally false. You're assuming 24 that someone in my company put Maxine Hall's 25 signature on the back of that check. The</p>

60 (Pages 234 to 237)

Lewis Edward O'leary, Jr. 10/6/2009

Page 238

1 handwriting resembles coincidentally very much Mrs.  
 2 Gordon's handwriting, and there was no IBM manual  
 3 typewriter amongst us while we were away from home  
 4 up here handling claims, but she admitted she had  
 5 such a typewriter in her attic, but swore that it  
 6 didn't work, and we weren't about to start our job  
 7 without a third down. And miraculously, somehow she  
 8 managed to get a signature, hers, her husband's and  
 9 Maxine Hall's and handed it to us, and we proceeded  
 10 to spend \$57,000. Yes, that is \$5,000 more than the  
 11 amount on the check to try to please the lady to do  
 12 her job, and we brought those records to trial, and  
 13 interestingly enough, the DA wasn't interested in  
 14 those records.

15 Q. That's not your -- it hasn't been your  
 16 only run-in with the law, has it been, Mr. O'Leary?  
 17 In 1994, in Harris County, Texas, you were indicted  
 18 for violation of the Texas property code; isn't that  
 19 right?

20 A. Specifically, I went bankrupt because a  
 21 major developer for a shopping center I was building  
 22 went bankrupt, and all of a sudden, I couldn't  
 23 finish jobs that I was working on, and according to  
 24 the laws in Texas at that time, if you've been given  
 25 money on account, you're supposed to keep separate

Page 239

1 accounts, and because of the overall circumstances,  
 2 I was given what's called deferred adjudication,  
 3 which means after three years, there was no  
 4 conviction because of the circumstances. I was not  
 5 -- I was part of a chain of dominoes. Ted Pole was  
 6 the judge on that, one of the strictest judges in  
 7 Harris County at the time, and he didn't see fit to  
 8 put me in jail over something like that.

9 Q. Beyond the two instances we've just  
 10 discussed, are there any other instances where  
 11 you've been charged with a crime?

12 MR. BROWN: I'm going to instruct the  
 13 witness not to answer that. I don't know what  
 14 charging him with a crime has to do with anything.  
 15 If you have evidence of some type of action being  
 16 taken, that's fine.

17 Q. (By Mr. Gilmore) Please answer the  
 18 question, Mr. O'Leary.

19 A. To the best of my knowledge, other than  
 20 these things we've been talking about where he's  
 21 practicing law without a license or he's practicing  
 22 engineering without a license, he's practicing  
 23 adjustment without a license, since I jumped the  
 24 fence about 15 years ago, there probably have been  
 25 more complaints filed in North Carolina against me

Page 240

1 and in some other states, and it's interesting  
 2 because I'm functioning the same way I've always  
 3 functioned. The only difference is now I'm  
 4 functioning largely for the consumers, and yet the  
 5 complaints have come like rain.

6 Q. So you're feeling that there's been some  
 7 kind of conspiracy among insurers to file complaints  
 8 against you since, as you said, you jumped the fence  
 9 and done almost all of your work for consumers,  
 10 property owners now?

11 A. Do you remember early on when I -- we were  
 12 talking about HAAG, and I told you in any large  
 13 company, you've got stars, duds and everything in  
 14 between, it's the same for any industry, including  
 15 the insurance industry. You've got some of the  
 16 finest people in the world working for insurance  
 17 companies, and you've got some people that are  
 18 really low down people, and you've got everything in  
 19 between. It's expected in any large industry that  
 20 you've got good, bad and in between.

21 Q. Have you ever been a defendant in a civil  
 22 suit?

23 A. Yes, sir.

24 Q. In connection with your professional  
 25 services either as a forensic consultant or a

Page 241

1 property appraiser, engineering services you've  
 2 provided?

3 A. As a defendant?

4 Q. Yes.

5 A. I can't recall a time. The only times I  
 6 can recall being a defendant in a lawsuit was  
 7 involved in cases in Texas where -- and one in North  
 8 Carolina now that I think about it -- where a  
 9 contractor was, I believe, removed from the job, and  
 10 he didn't like being removed from the job. I would  
 11 have to get you the details on it, but I don't  
 12 remember the specifics anymore because it's been  
 13 about 12 years ago.

14 Q. Have you ever been a plaintiff in a  
 15 lawsuit?

16 A. Yes, sir, I've sued people before.

17 Q. Have you ever sued an insurance company  
 18 regarding an insurance claim you had?

19 A. I don't think so.

20 Q. What -- do you have homeowners insurance  
 21 in your house where you live today?

22 A. Yes, sir.

23 Q. Which carrier do you have?

24 A. Allstate.

25 Q. Have you ever been insured by Nationwide?

Lewis Edward O'leary, Jr. 10/6/2009

Page 242

1 A. You know, I'm not sure. I've owned a  
2 number of pieces of property in my lifetime. I  
3 wouldn't run from Nationwide. I think Nationwide is  
4 a decent company if that's what you're asking me.  
5 Q. That could be what I'm asking you. We've  
6 talked about your report in some detail and gone  
7 through a few examples of your Xactimate estimates.  
8 Is there anything significant that you expect to  
9 testify about at trial that we have not touched upon  
10 in your deposition today?  
11 A. If I can get my hands on what Nationwide  
12 has, it could easily affect my report, because up to  
13 now, I haven't had Nationwide's material, but I'm in  
14 the process of getting Nationwide material. I  
15 already have Mr. Skees' report. Did I get it right  
16 that time?  
17 Q. Yeah.  
18 A. I'm about to get National Forensic Group's  
19 reports, and God willing, a lot of photographs.  
20 That makes a difference. Writing a report based on  
21 information that you can get on your own that was  
22 either from independent third parties and one side  
23 only is still not a complete picture. I need a  
24 whole picture to write a balanced report.  
25 Q. Please send us an e-mail or a letter if

Page 243

1 there's any material that you have not gotten that  
2 you think Nationwide has. We will be happy to  
3 provide it to you if you want to review it for your  
4 expert report.  
5 A. I think if you -- you will go in behind me  
6 with this incredibly good forensic engineer here  
7 locally, Joe LaFranco, Quest Forensic Services, you  
8 will find that we've bent over backwards to try to  
9 gather every piece of information there was so we  
10 could write a balanced opinion on that case.  
11 MR. GILMORE: Mr. O'Leary, I don't have  
12 any further questions for you at this time.  
13 Counsel, we are reserving the right to reopen this  
14 deposition to the extent Mr. O'Leary supplements or  
15 changes his report as he discussed today. And  
16 further, we also reserve the right to redepose Mr.  
17 O'Leary in his capacity as an appraiser if and when  
18 the court allows the parties to proceed with  
19 discovery regarding the appraisal process.  
20 MR. BROWN: Okay. That sounds fair  
21 enough. I just have a couple of quick questions  
22 which I hate to do this at 5:25.  
23 EXAMINATION BY MR. BROWN:  
24 Q. Sir, would you look at the photographs  
25 that were marked as D-237, and as you're looking

Page 244

1 through that package, would you look at all of the  
2 photographs behind door number 19?  
3 A. (Examining.) Okay.  
4 Q. In reviewing those photographs, did you  
5 see any indication in the photographs numbered  
6 consecutively after door number 19 that indicated  
7 that there was any damage to the ceiling of this  
8 unit?  
9 A. There was extensive --  
10 MR. GILMORE: Objection to the form,  
11 leading.  
12 A. There was extensive damage to the upstairs  
13 ceiling.  
14 Q. (By Mr. Brown) Okay. Would you turn to  
15 the first photograph and read the number of that  
16 photograph that shows damage to the upstairs  
17 ceiling?  
18 MR. GILMORE: Objection to the form,  
19 leading.  
20 A. Numbers 5970, 5971. Those are the only  
21 two.  
22 Q. (By Mr. Brown) Okay. Could you hold up  
23 those two photographs for the camera, please, sir?  
24 A. (Witness complies.)  
25 Q. And what do those photographs generally

Page 245

1 indicate to you?  
2 MR. GILMORE: Objection to the form.  
3 A. It appears to be a collapsed ceiling in a  
4 bedroom.  
5 Q. (By Mr. Brown) Okay. And where were the  
6 bedrooms likely located in this unit?  
7 A. Upstairs.  
8 Q. Would that have been the result of the  
9 water rising from the flood surge?  
10 A. No, no, it would have been likely the  
11 result of wind.  
12 Q. And does that look like -- would you say  
13 water would have entered the unit from the ceiling?  
14 A. Yes.  
15 Q. And do you have any opinion as to what the  
16 effects of that water entering from the ceiling  
17 might have been?  
18 MR. GILMORE: Objection to the form,  
19 leading.  
20 Q. (By Mr. Brown) Go ahead.  
21 A. The roofs here were -- were severely  
22 damaged, could easily allow a lot of water in.  
23 These units had semi-gloss finish, I believe, and  
24 semi-gloss won't normally stain unless you just  
25 abuse it unbelievably, which is part of the reason

62 (Pages 242 to 245)

Lewis Edward O'leary, Jr. 10/6/2009

Page 246

1 why they use semi-gloss, one, because it's wipeable  
2 in an apartment, and the other is because stains  
3 don't show. You could have significant staining on  
4 a ceiling downstairs, and it wouldn't show until it  
5 started bailing and collapsing.

6 Q. What do these photographs indicate to you?

7 A. That the amount of water that entered the  
8 attic area above this bedroom was so significant  
9 that the -- the weight of the wet Sheetrock  
10 insulation caused it to pull away from the nails and  
11 collapse into the room.

12 Q. And where would that water from the second  
13 floor have ended up?

14 A. It would likely soak through the carpet in  
15 the subfloor. If there was enough of it, it would  
16 run down the stairs or it would just go through the  
17 ceiling cavity to the ground floor.

18 Q. Do you have any opinion as to whether that  
19 amount of water that caused that damage to the  
20 second floor ceiling would have also caused damage  
21 to the walls, cabinets and other portions of the  
22 first floor?

23 MR. GILMORE: Objection, leading.

24 A. If it had not --

25 MR. BROWN: Okay. Hold up right here.

Page 247

1 The man is an expert witness. If I can't lead an  
2 expert witness. What rule are you on?

3 MR. GILMORE: Respect my objections,  
4 counsel, and ask your questions.

5 MR. BROWN: You're just popping up with an  
6 objection every time I say something.

7 MR. GILMORE: Counsel, you don't need to  
8 characterize my objections. You didn't choose to  
9 make any objections. I'm just making a record here.  
10 If you want to continue asking your witness  
11 questions, that's fine. He's not a hostile witness,  
12 and I don't think you can treat him as a --

13 MR. BROWN: I can't lead my own expert?

14 MR. GILMORE: -- hostile witness.

15 MR. BROWN: Is that your position?

16 MR. GILMORE: I'm making my objections for  
17 the record, counsel. You don't need to have a  
18 colloquy. I'd like to make a flight. If you want  
19 to continue this deposition by asking your own  
20 witness questions, I'm not going to stop you, but  
21 I'd like to get out of here, so keep asking your  
22 questions, and I will make my objections. We don't  
23 need to talk about it.

24 A. I've forgot the question.

25 MR. BROWN: Could you read back the

Page 248

1 question, please?

2 (Record read.)

3 A. Clearly from the photographs presented to  
4 me, the damage had not manifested itself to a point  
5 where it was visible on the ground floor.

6 Semi-gloss paint will have a tendency to hide any  
7 amounts of water that's coming down through the  
8 ceiling or walls, but because of the condition of  
9 these roofs, that downstairs was not more than one  
10 squall away from being ruined because tarps just are  
11 not going to prevent rain from a serious squall from  
12 getting back into this attic again, and without that  
13 Sheetrock ceiling in place anymore, it's heading  
14 straight down the stairs.

15 Q. Okay. Let me show you the Defendant's  
16 Exhibit 236. You see there on page 5635 the -- the  
17 number 2?

18 A. Yes, sir.

19 Q. Now, would you look through the  
20 photographs that are there behind door number 2?

21 A. This sounds like a game show, behind door  
22 number 2. Okay.

23 Q. Was this a second -- two floor unit as  
24 well?

25 A. Are you asking me are there photographs of

Page 249

1 upstairs here?

2 Q. Well, I'm asking you, first of all, if --

3 A. I believe they were all two-story units.

4 Q. And are there any photographs of the  
5 upstairs?

6 A. No, sir, just downstairs.

7 Q. So can you form a picture from those five  
8 or six photographs as to whether water entered this  
9 unit from the second floor ceiling?

10 A. I can't tell anything about the second  
11 floor from these photographs because there are no  
12 photographs of the second floor. From the condition  
13 the roofs are in, both the second floor and first  
14 floor were one squall away from a catastrophe.

15 MR. BROWN: I have no more questions.

16 MR. GILMORE: I have no questions.

17 VIDEOGRAPHER: Off the record at 5:30.

18 End of deposition.

19 (Off the record.)

20 (Time Noted: 5:30 p.m.)

21 SIGNATURE/NOT WAIVED

22

23 ORIGINAL: ROBERT GILMORE, ESQ.

24 COPY: MATTHEW BROWN, ESQ.

25

Lewis Edward O'leary, Jr. 10/6/2009

Page 250

1 CERTIFICATE OF DEPONENT  
 2 DEPONENT: LEWIS EDWARD O'LEARY, JR.  
 DATE: October 6, 2009  
 3 CASE STYLE: SUNQUEST PROPERTIES, INC. , ET AL. vs.  
 NATIONWIDE, ET AL.  
 4 ORIGINAL TO: ROBERT B. GILMORE, Esq.  
 I, the above-named deponent in the  
 5 deposition taken in the herein styled and numbered  
 cause, certify that I have examined the deposition  
 6 taken on the date above as to the correctness  
 thereof, and that after reading said pages, I find  
 7 them to contain a full and true transcript of the  
 testimony as given by me.  
 8 Subject to those corrections listed below,  
 if any, I find the transcript to be the correct  
 9 testimony I gave at the aforestated time and place.

Page	Line	Comments
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____

17 This the \_\_\_\_ day of \_\_\_\_\_, 2009.  
 18 \_\_\_\_\_  
 LEWIS EDWARD O'LEARY,  
 19 JR.  
 State of Mississippi  
 20 County of \_\_\_\_\_  
 21 Subscribed and sworn to before me, this the  
 \_\_\_\_ day of \_\_\_\_\_, 2009.  
 22  
 23 My Commission Expires:  
 24 \_\_\_\_\_  
 25 Notary Public

Page 251

1 CERTIFICATE OF COURT REPORTER  
 2 I, Kelly M. Powell, Court Reporter and  
 3 Notary Public, in and for the State of Mississippi,  
 4 hereby certify that the foregoing contains a true  
 5 and correct transcript of the testimony of LEWIS  
 6 EDWARD O'LEARY, JR., as taken by me in the  
 7 aforementioned matter at the time and place  
 8 heretofore stated, as taken by stenotype and later  
 9 reduced to typewritten form under my supervision by  
 10 means of computer-aided transcription.

11 I further certify that under the authority  
 12 vested in me by the State of Mississippi that the  
 13 witness was placed under oath by me to truthfully  
 14 answer all questions in the matter.

15 I further certify that I am not in the  
 16 employ of or related to any counsel or party in this  
 17 matter and have no interest, monetary or otherwise,  
 18 in the final outcome of this matter.

19 Witness my signature and seal this the 8TH  
 20 day of October, 2009.

21  
 22  
 23 \_\_\_\_\_  
 Kelly M. Powell, CSR

24 My Commission Expires:  
 25 March, 2011

64 (Pages 250 to 251)